

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1987

UNITED STATES CATHOLIC CONFERENCE  
and  
NATIONAL CONFERENCE OF CATHOLIC BISHOPS,  
v. *Petitioners,*  
ABORTION RIGHTS MOBILIZATION, INC., *et al.,*  
*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Second Circuit

JOINT APPENDIX

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## NOTICE

The following opinions and orders have been omitted in printing this Appendix because they appear on the following pages in the printed Appendix to the petition for a writ of certiorari, which is incorporated herein by reference.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

No. 80 Civ. 5590

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,  
*Plaintiffs,*

v.

DONALD T. REGAN,  
Secretary of the Treasury, *et al.*,  
*Defendants.*

DOCKET ENTRIES

Date	Nr.	Proceedings
10-02-80	1.	Filed Compl't. & iss. summs & notice purs. to rule 636(c)
01-30-81	5.	Filed pl'tffs amended compl't.
7-19-82	23	Filed Opinion #53431 . . . the motion to dismiss is granted in part and denied in part. CARTER, J. m/n
7-30-82	25	Filed Final Judgment as to USCC and NCCB . . . . Ordered that the motion of USCC and NCCB to dismiss all claims against them set forth in the amended complaint is granted; that all claims set forth in the amended complaint against USCC and NCCB are dismissed without prejudice in favor of defts USCC and NCCB and against pl'tffs . . . CARTER, J. Judgment entered 7-30-82 CLERK m/n
9-8-82	30	Filed defts Regan and Egger's ANSWER to the amended complaint. USA



Date	Nr.	Proceedings
2-3-82	35	Filed Opinion #53983 . . . The motion for § 1292(b) certification is denied. In light of the above disposition, there is no basis for a stay of discovery. The parties should proceed promptly to complete all the trial preparation as expeditiously as possible. CARTER, J. m/n esc
2-28-83	39	Filed plttfs' notice of deposition of US Catholic Conference, on 3-21-83.
2-28-83	40	Filed plttfs' notice of deposition of National Conference of Catholic Bishops, on 3-21-83.
4-15-83	42	Filed notice of motion of US Catholic Conference and National Conference of Catholic Bishops for an order quashing the subpoenas duces tecum served by plttfs and defts, purs. to Rule 45. ret: 5-9-83
4-4-84	57	Filed endorsement order . . . the motion to quash the plttfs' subpoenas is summarily denied . . . CARTER, J.
8-10-84	59	Filed defts' notice of motion for an order dismissing the complaint for lack of subject matter jurisdiction, purs. to Rule 12(b) (6). ret: 9-24-84
8-23-84	61	Filed memorandum of United States Catholic Conference and National Conference of Catholic Bishops as <i>amici curiae</i> in support of the Government's renewed motion to dismiss.
3-1-85	66	Filed Opinion #57313 . . . defts' renewed motion to dismiss the amended complaint for lack of subject matter jurisdiction is denied. CARTER, J. (copies mailed to counsel)

Date	Nr.	Proceedings
6-20-85	71	Filed plttf's affdvt of Marshall Beil & Notice of motion for an order holding the U.S. Catholic Conference and the National Conference of Catholic Bishops in contempt for failure to comply with the deposition subpoenas duces tecum served upon them on 4-3-84. ret: 7-5-85
6-26-85	73	Filed notice of motion for a protective order, purs. to Rule 26(c) of United States Catholic Conference and National Conference of Catholic Bishops. ret: 7-5-85
7-15-85	77	Filed Opinion. #57929. For these reasons the motion for certification of an interlocutory appeal from the court's previous order is denied. SO ORDERED. CARTER, J.
9-5-85	79	Fld. Memo-Endorsed Order that USCC & NCCB are ordered to comply with the subpoena forthwith, etc . . . CARTER, J.
10-11-85	82	Filed plttfs affdvt & Notice of Motion for an order holding US Catholic & National Conf. in civil contempt for failure to comply with deposition subpoenas duces tecum RET: 10-25-85
11-20-85	84	Filed Order that plttfs renewed motion for contempt is denied, without prejudice, etc. . . as indicated . . So ordered . . Carter, J. cmc
1-17-86	85	Filed true copy of Mandate Order from the USCA 2nd cir . . Ordered that the petition is denied . . . Clerk, USCA
7-4-86	88	Filed Protective Order the words "party or parties" include the plttfs & defts the term NCCB/USCC refers to NCCB, USCC and any other persons or entities affiliated with the Roman Cath. Church that become sub-

Date	Nr.	Proceedings
		ject to disc. and agree to be bound by the terms of this order . . . etc . . as indicated . . So Ordered . . Carter, J.
2-26-86	92	Filed Endorsement . . unless the court of appeals grants the petition for rehearing in the interim, the USCC/NCCB are ordered by 3-7-86 to produce the material requested by plttfs . . failure or refusal of the USCC/NCCB to produce material requested will constitute grounds for renewal plttfs motion . . So Ordered. Carter, J.
3-11-86	93	Filed true copy of mandate order & Statement of Costs from the USCA 2nd cir . . Ordered that petition for rehearing is denied . . Clerk, USCA 2nd cir.
3-19-86	84	Filed plttfs affdvt & Notice & plttfs renewed motion for contempt. RET: 3-31-86
3-20-86	86	Filed Stip & Order that the amended complt is further amended to delete the three plttfs Bostrom, Vuitch, & Delgado . . So Ordered . . Ward, J.
5-8-86	91	Filed opinion #59284 . . . motions are denied . . . etc . . as indicated. . So Ordered . . . Carter, J.
5-9-86	93	Filed Order that courts opinion is amended to add that it is the judgt on this Court that plttfs are entitled to attys fees for the time spent in disc. conf. & negotiations with USCC/NCCB after conf. concerning subpoenas . . . etc . . Carter, J.
5-12-86	94	Filed defts USCC & NCCB Notice of Appeal to the USCA 2nd cir from the order of 5-9-86.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

80 Civ 5590 (RLC)

ABORTION RIGHTS MOBILIZATION, INC.; LAWRENCE LADER; HAROLD W. BOSTROM; MARGARET O. STRAHL, M.D.; HELEN W. EDEY, M.D.; RUTH P. SMITH; NATIONAL WOMEN'S HEALTH NETWORK, INC.; LONG ISLAND NATIONAL ORGANIZATION FOR WOMEN—NASSAU, INC.; RABBI ISRAEL MARGOLIES; REVEREND BEA BLAIR; RABBI BALFOUR BRICKNER; REVEREND ROBERT HARE; REVEREND MARVIN G. LUTZ; LAUREL CLINIC, INC.; MILAN M. VUITCH, M.D.; WOMEN'S CENTER FOR REPRODUCTIVE HEALTH; THE FEDERATION OF FEMINIST WOMEN'S HEALTH CENTERS, INC.; HARRISBURG REPRODUCTIVE HEALTH SERVICES, INC.; HAGERSTOWN REPRODUCTIVE HEALTH SERVICES, INC.; WOMEN'S HEALTH SERVICES, INC.; JANE C. DELGADO; JENNIE ROSE LIFRIERI; EILEEN WALSH; PATRICIA SULLIVAN LUCIANO; MARCELLA MICHALSKI; CHRIS NIEBRZYDOWSKI; JUDITH A. SEIBEL; KAREN DECROW; and SUSAN SHERER,

-against- *Plaintiffs,*

DONALD T. REGAN, Secretary of the Treasury; ROSCOE L. EGGER, JR., Commissioner of Internal Revenue; UNITED STATES CATHOLIC CONFERENCE, INCORPORATED; and NATIONAL CONFERENCE OF CATHOLIC BISHOPS,

*Defendants.*

AMENDED COMPLAINT

Plaintiffs, by their attorneys, for their amended complaint allege:

1. This is an action for declaratory and injunctive relief to enforce the doctrine of the separation of church and state as required by the First Amendment to the Con-

stitution of the United States and by § 501(c) (3) of the Internal Revenue Code, 26 U.S.C. § 501(c) (3).

### *Jurisdiction*

2. This action arises under the First and Fifth Amendments to the Constitution; Article VI, Clause 3 of the Constitution; Sections 170 and 501 of the Internal Revenue Code (hereinafter "the Code"), 26 U.S.C. §§ 170 and 501; and 28 U.S.C. §§ 2201-02. Jurisdiction is founded on 28 U.S.C. § 1331, 1340, and 1361. The amount in controversy, exclusive of interest and costs, exceeds \$10,000.

### *The Parties*

3. Plaintiff ABORTION RIGHTS MOBILIZATION, INC. ("ARM"), located in the City, County and State of New York, is a national, contributor-supported organization dedicated to the guarantee and implementation of the constitutional right of women to choose to have abortions. ARM is a nonprofit corporation exempt from taxes under § 501(c) (3) of the Code.

4. Plaintiff Lawrence Lader, a United States citizen residing in New York, New York, is the President of ARM. The following plaintiffs are each United States citizens and contributors to ARM:

- a) HAROLD W. BOSTROM, of Oconomowoc, Wisconsin;
  - b) MARGARET O. STRAHL, M.D., of Pelham, New York;
  - c) HELEN W. EDEY, M.D., of New York, New York; and
  - d) RUTH P. SMITH, of New York, New York.
- Each of these plaintiffs supports the goals for which ARM was formed and to which it devotes its activities.

5. Plaintiff NATIONAL WOMEN'S HEALTH NETWORK, INC. ("NWHN"), located in Washington, D.C., is a nationwide membership organization of individuals and organizations who, individually and jointly, seek to secure and implement, through research, publications, education and grants, women's rights to safe and legal abortions. NWHN is a non-profit corporation, exempt from taxes under § 501 (c) (3) of the Code.

6. Plaintiff LONG ISLAND NATIONAL ORGANIZATION FOR WOMEN—NASSAU, INC. ("Nassau-NOW") is a membership organization whose members, individually and jointly, are dedicated to the promotion of women's rights including the right to have an abortion. Nassau-NOW is a non-profit corporation exempt from taxes under § 501(c) (4) of the Code.

7. The following plaintiffs are clergymembers whose religious tenets, beliefs and teachings do not prohibit abortions but rather hold it permissible for women to choose to have abortions if they so desire:

- a) RABBI ISRAEL MARGOLIES who is Rabbi of Beth Am, the People's Temple of New York, New York;
- b) REVEREND BEA BLAIR who is Associate Pastor of the Church of the Heavenly Rest, an Episcopal Church in New York, New York;
- c) RABBI BALFOUR BRICKNER who is Rabbi of the Stephen Wise Free Synagogue of New York, New York;
- d) REVEREND ROBERT HARE who is Pastor of the Scarborough Presbyterian Church, New York, N.Y.;
- e) REVEREND MARVIN G. LUTZ, a Presbyterian minister with the Jacksonville (Florida) Clergy Consultation Service, Inc.



8. The following plaintiffs are doctors and medical clinics which perform abortions:

- a) LAUREL CLINIC, INC., Washington, D.C.;
- b) MILAN M. VUITCH, M.D., President of the Laurel Clinic, Inc.;
- c) WOMEN'S CENTER FOR REPRODUCTIVE HEALTH, Jacksonville, Florida;
- d) THE FEDERATION OF FEMINIST WOMEN'S HEALTH CENTERS, INC., Chico, California;
- e) HARRISBURGH REPRODUCTIVE HEALTH SERVICES, INC., Harrisburg, Pennsylvania;
- f) HAGERSTOWN REPRODUCTIVE HEALTH SERVICES, INC., Hagerstown, Maryland;
- g) WOMEN'S HEALTH SERVICES, INC., Pittsburgh, Pennsylvania.

9. The following plaintiffs are Roman Catholics who, in keeping with their religious beliefs and teachings, contribute to the Roman Catholic Church, but are opposed to the Church's position on abortion:

- a) JANE C. DELGADO, New York, New York;
- b) JENNIE ROSE LIFRIERI, Hastings-on-Hudson, New York;
- c) EILEEN WALSH, Seaford, New York;
- d) PATRICIA SULLIVAN LUCIANO, Seaford, New York;
- e) MARCELLA MICHALSKI, Pittsburgh, Pennsylvania;
- f) CHRIS NIEBRZYDOWSKI, Pittsburgh, Pennsylvania;
- g) JUDITH A. SEIBEL, Pittsburgh, Pennsylvania.

10. Plaintiffs KAREN DECROW, who resides in Syracuse, New York, and is a former president of the National Organization for Women, and SUSAN SHERER who resides in Plainview, New York, are taxpayers and registered voters. Plaintiffs Lader, Bostrom, Strahl, Edey, Smith, Margolies, Blair, Brickner, Hare, Lutz, Vuitch, Delgado, Lifrieri, Walsh, Luciano, Michalski, Niebrzydowski and Seibel are also taxpayers and registered voters.

11. Defendant DONALD T. REGAN is the Secretary of the Treasury of the United States ("Secretary"). Defendant ROSCOE L. EGGER, JR., is the Commissioner of Internal Revenue of the United States Internal Revenue Service (hereinafter respectively "Commissioner" and "IRS"). The Secretary and the Commissioner are the principal officials of the federal government responsible for the administration and enforcement of the Internal Revenue Code. 26 U.S.C. §§ 7801(a), 7802(a).

12. Defendants UNITED STATES CATHOLIC CONFERENCE INCORPORATED ("USCC") and the NATIONAL CONFERENCE OF CATHOLIC BISHOPS ("NCCB") (together collectively referred to as the "Roman Catholic Church" or "the Church"), are the two principal national organizations of the Roman Catholic Church in the United States. Upon information and belief: The USCC is a non-profit corporation which has been granted a tax exemption under § 501(c)(3) of the code on behalf of the entire Roman Catholic Church in the United States. The NCCB is an unincorporated association of the approximately 350 Catholic bishops in the United States. The governing bodies and principal staff of the USCC and the NCCB are the same.

#### *General Allegations*

13. In Section 501(c)(3) of the Internal Revenue Code, Congress exempted from income taxation any organization which is "organized and operated exclusively for", among others, "religious, charitable . . . or educational purposes."

14. Contributions by individual or corporate taxpayers to such organizations are made deductible for income tax purposes by § 170(a) of the Code.

15. The exemption is not without limitation. Section 501(c)(3) of the Code flatly prohibits a tax exempt organization from

“participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”

16. With regard to religious organizations, the prohibition of political activity for or against candidates for public office is a statutory recognition of the fundamental principle of the separation of church and state.

17. Such a prohibition is required by the First Amendment to the Constitution of the United States which prohibits the establishment of religion by the federal government.

18. Section 501(c)(3) also represents a sound policy judgment by the Congress that tax-exempt, deductible dollars should not be used by tax-exempt organizations to influence political campaigns.

19. The Roman Catholic Church has repeatedly and consistently breached this constitutional and statutory prohibition. The Church has repeatedly and consistently intervened in political campaigns to further its religious belief that no one should be able to obtain an abortion in the United States.

20. The Secretary and the Commissioner, however, have just as consistently overlooked these violations and failed and refused to perform their statutory duty to enforce the Code and the Constitution.

21. The blueprint for the Church's illegal activities is the pastoral plan entitled “A Pastoral Plan for Pro-Life

Activities” (hereinafter “the Pastoral Plan”) adopted by the USCC and the NCCB at a joint meeting in November 1975.

22. The Pastoral Plan calls upon “all church-sponsored or identifiably Catholic national, regional, diocesan and parochial organizations and agencies” (including the “NCCB/USCC . . . and priests, religious and lay persons”) “to activate the pastoral resources of the church” in a “major” three-fold educational, pastoral and political effort to outlaw abortions in the United States.

23. As part of its political effort, the Pastoral Plan pledges the “systematic organization and allocation of the Church's resources of people, institutions and finances,” both nationally and locally, to obtain the passage of a constitutional amendment prohibiting abortions and of other anti-abortion legislation.

24. One method described by the Pastoral Plan to achieve this goal is the creation of “congressional district pro-life action group[s]” whose objectives are, *inter alia*:

“(8) To elect members of their own group of active sympathizers to specific posts in all local party organizations.

“ . . .

“(10) To maintain an informational file on the pro-life position of every elected official and potential candidate.

“(11) To work for qualified candidates who will vote for a constitutional amendment, and other pro-life issues. . . .”

25. Upon information and belief: Pursuant to Church policy, Roman Catholic priests and other Church officials have actively and systematically participated in political campaigns in all parts of the country, supporting “pro-life” and opposing “pro-choice” candidates for public office. Some of these recent activities include:



- a) During the 1978 and 1980 political campaigns, church newspapers and bulletins in many parts of the country, including Minnesota, Michigan, Pennsylvania and Texas, published articles attacking by name pro-abortion candidates.
- b) One such journal, the official publication of the San Antonio, Texas archdiocese, published in May 1970 an editorial supporting Ronald Reagan, attacking John Anderson and commenting on specific congressional candidates. The article was entitled "To the IRS—'NUTS!!!"
- c) In October 1978 agencies and officials of the Pittsburgh, Pennsylvania diocese published bulletins and letters criticizing Congressman William Moorhead by name and urging Catholics to vote for his named opponent.
- d) In September 1980, Humberto Cardinal Medeiros, Roman Catholic Archbishop of Boston, attacked two candidates for Congress in a letter sent to 410 parishes a few days before the primary election. The letter was read from many pulpits and published in the official archdiocese newspaper. A few days earlier Monsignor Battista of the Catholic diocese of Worcester, Mass., distributed widely a letter also attacking one of the candidates by name for his stand on abortion.
- e) In April, 1980, a South Dakota priest publically attacked by name Senator George McGovern because of his abortion rights stand, supported his opponent by name and called upon his "brother priests" for their "moral and active support in promoting Larry's candidacy in your community."

26. Upon information and belief: Many Catholic priests and other Church officials in all parts of the country, including New York, have, from their pulpits, regularly

and repeatedly urged their congregants to donate to "right-to-life" committees and political parties, to obtain (often in the church parking lot following the service) "right-to-life" campaign literature, to sign the nominating petitions of "right-to-life" candidates. At least one church has distributed "right-to-life" leaflets with the church bulletin.

27. In addition, upon information and belief: many of the dioceses and archdioceses of the Roman Catholic Church in the United States have contributed substantial sums of money to "right-to-life" and other political groups which have, directly or indirectly, supported the political candidacies for public office of persons favoring anti-abortion legislation.

28. In 1976, for example, upon information and belief, the Church in New York donated substantial sums to the New York State Right to Life Committee which was then actively promoting the senatorial candidacy of James Buckley.

29. These and other activities of the Roman Catholic Church violate the clear language and intent of § 501(c) (3) prohibiting the use of tax-exempt funds in political campaigns for public office.

30. Upon information and belief: The IRS, the Secretary and the Commissioner have had knowledge of these illegal activities. The adoption of the Pastoral Plan and many of the illegal activities described above, as well as others, have been well publicized in the general secular press, the Catholic press and other media.

31. Upon information and belief, the IRS has been specifically informed of the Church's illegal activities by other citizens and taxpayers who have requested enforcement action. No such action has been taken.

32. Although they are under a ministerial duty to do so, the Secretary and the Commissioner have done nothing

ing to enforce the law. They have not revoked the tax-exempt status of the USCC or any other Roman Catholic Church agency or organization. Nor have they taken any appropriate preventive or enforcement measures against the Church for these violations of § 501(c) (3).

33. Upon information and belief, the IRS has revoked or threatened to revoke the tax-exempt status of others, including other religious and secular organizations, who have violated or have been charged with violating § 501(c) (3). The Secretary and the Commissioner, however, have exempted the Roman Catholic Church from the strictures of the law and from the government's enforcement efforts.

34. The illegal activities of the USCC and the NCCB and the refusal and failure of the Secretary and the Commissioner to enforce the Code and the Constitution have substantially harmed the plaintiffs in numerous ways.

35. The Code gives to qualifying non-profit organizations a choice: either an organization can choose to forego participation in political campaigns for public office in exchange for a tax exemption under § 501(c) (3) of the Code, or it can elect to participate in political campaigns and pay taxes.

36. There is a significant difference between the two situations in addition to the tax status of the organizations: contributions by individual or corporate taxpayers to a § 501(c) (3) organization are deductible by the contributors on their individual tax returns. Contributions to non-tax-exempt organizations are not deductible. (Contributions to organizations exempt under § 501(c) (4) of the Code are also not deductible, although the organizations themselves do not pay taxes.)

37. As the tax deductibility of contributions is an important factor in fund-raising, it is generally considered easier for a § 501(c) (3) organization to raise funds than

for organizations which are not exempt, or are exempt under § 501(c) (4).

38. Plaintiffs ARM, NWHN, Nassau-NOW and their officers, members and contributors (including, without limitation, plaintiffs Lader, Bostrom, Strahl, Edey and Smith) have all abided by the applicable Code provisions.

39. ARM and NWHN, as § 501(c) (3) organizations, and Nassau-NOW, as a § 501(c) (4) organization, have refrained from endorsing or opposing candidates for public office in order to preserve their favorable tax status, and, for ARM and NWHN, in order to be able to offer tax deductions to their contributors.

40. The failure and refusal of the Secretary and the Commissioner to enforce the Code against the Roman Catholic Church, however, has put these plaintiffs at a significant disadvantage in the public debate on abortion. The Church has, with impunity, attracted and used tax-exempt, tax-deductible dollars to elect candidates sympathetic to its position, whereas the plaintiffs cannot and have not done so.

41. Thus, abortion rights organizations and individuals including the plaintiffs, who acted in conformity to the Code, do not enjoy the same financial and political advantages granted illegally to the Roman Catholic Church by the Secretary and the Commissioner. In the inherently competitive political arena an advantage granted to one competitor automatically constitutes a handicap to the others.

42. Plaintiffs Rabbi Margolies, Reverend Blair, Rabbi Brickner, Reverend Hare and Reverend Lutz are harmed by defendants' activities in two ways. These plaintiffs are law-abiding clergymen, whose religious views on abortion are diametrically opposed to those of the Roman Catholic Church. Unlike the Church, however, these plaintiffs have had to and do refrain from participating in political



campaigns, for fear of losing the tax exemption of their congregations and churches.

43. The failure of the government defendants to apply the Code equally to the Roman Catholic Church is in effect a subsidy of the Church's efforts to further its religious aims in the political sphere, a subsidy not granted to law-abiding religious organizations and clergy such as the plaintiffs, who hold contrary religious beliefs. This constitutes an unconstitutional establishment of religion.

44. Plaintiffs Laurel Clinic, Dr. Vuitch, Women's Center for Reproductive Health, The Federation of Feminist Women's Health Centers, Inc., Harrisburg Reproductive Health Services, and Hagerstown Reproductive Health Services, Inc., who all derive income from the performance of abortions, have lost income and are threatened with substantial further losses, if not being put out of business altogether, because of the past and potential future successes of the Church's government-subsidized intervention in political campaigns in support of candidates dedicated to restricting or eliminating the right to abortions.

45. Plaintiff Women's Health Services, Inc., is threatened with having its abortion clinic closed down entirely if the Church's government-subsidized political efforts succeed.

46. Plaintiffs Delgado, Lifrieri, Walsh, Luciano, Michalski, Niebrzydowski and Seibel contribute to the Roman Catholic Church. These religiously-compelled contributions, however, are being used by the Church, with defendants' approval, illegally and for purposes inconsistent with these plaintiffs' religious and secular beliefs.

47. Plaintiffs DeCrow and Sherer and the other plaintiffs who are taxpayers and voters are harmed in two ways.

48(a). As taxpayers, they are harmed because the government's subsidy of the Roman Catholic Church's illegal

political activities is the equivalent of a government expenditure to establish a religion in violation of the First Amendment to the Constitution.

(b). As voters, they are harmed by the unequal enforcement of the Code by the Secretary and the Commissioner which constitutes an illegal, unfair and unconstitutional distortion of the political process by the government and impairs and diminishes plaintiffs' right to vote.

49. An actual controversy exists between plaintiffs and defendants, and plaintiffs have no adequate remedy at law to rectify their losses and alleviate their harms.

50. Upon information and belief, the Secretary and the Commissioner have not established any internal administrative procedures which would allow plaintiffs to obtain administratively the relief they seek in this Court.

### COUNT ONE

51. Plaintiffs repeat and reallege the allegations of paragraphs 1-50 herein.

52. The activities of the Roman Catholic Church violate § 501(c) (3) of the Code and the First Amendment to the Constitution.

### COUNT TWO

53. Plaintiffs repeat and reallege the allegations of paragraphs 1-50 and 52 herein.

54. The failure and refusal of the Secretary and the Commissioner to revoke the tax exemption of the Roman Catholic Church constitute an unconstitutional establishment of religion by the federal government in violation of the Constitution.

### COUNT THREE

55. Plaintiffs repeat and reallege the allegations of paragraphs 1-50, 52 and 54 herein.

56. The failure and refusal of the Secretary and the Commissioner to revoke the tax exemption of the Roman Catholic Church deny plaintiffs due process, including the equal protection of the laws, in violation of the Fifth Amendment to the Constitution.

#### COUNT FOUR

57. Plaintiffs repeat and reallege the allegations of paragraphs 1-50, 52, 54 and 56 herein.

58. The failure and refusal of the Secretary and the Commissioner to revoke the tax exemption of the Roman Catholic Church constitute the establishment of a religious test as a qualification for public office in violation of Article VI, Clause 3 of the Constitution.

#### COUNT FIVE

59. Plaintiffs repeat and reallege the allegations of paragraphs 1-50, 52, 54, 56 and 58 herein.

60. The failure and refusal of the Secretary and the Commissioner to revoke the tax exemption of the Roman Catholic Church constitute a failure by the Secretary and the Commissioner to perform their respective ministerial duties under law to enforce the Code and the Constitution.

WHEREFORE, plaintiffs respectfully demand judgment against defendants as follows:

a) declaring the political activities of the Roman Catholic Church to be in violation of the Code and the Constitution;

b) declaring the inaction by the Secretary and the Commissioner to be in violation of the Code and the Constitution;

c) ordering the Secretary and the Commissioner to take all actions necessary or appropriate to enforce the Code and the Constitution, including without limitation, revoking the tax exemption of the Roman Catholic

Church under § 501(c)(3) of the Code, assessing and collecting all taxes due thereby, and notifying or causing the Church to notify contributors to the Church that they are not entitled to deduct such contributions on their individual tax returns;

d) awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees;

e) awarding plaintiffs such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 30, 1981

/s/ Steven Delibert

MARSHALL BEIL, ESQ.

STEVEN DELIBERT, ESQ.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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(Title Omitted in Printing)

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NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed memorandum, the defendants Donald T. Regan, Secretary of the Treasury, and Roscoe L. Egger, Jr., Commissioner of Internal Revenue, will move this Court, in a session to be held on the 29th day of May 1981 at 10:00 in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint in the within action for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, and for such other and further relief as to this Court may seem proper and just.

Dated: New York, New York  
March 30, 1981

Yours, etc.,

JOHN S. MARTIN, JR.  
United States Attorney  
Southern District of New York

By: /s/ William J. Brennan  
WILLIAM J. BRENNAN  
Assistant United States Attorney  
Tel.: (212) 791-1971

TO: KARPATKIN, POLLET, DELIBERT & BEIL  
Attorney for Plaintiffs  
6 East 43rd Street  
New York, New York 10017

SIMPSON, THACHER, & BARTLETT  
Attorneys for Defendants USCC and NCCB  
One Battery Park Plaza  
New York, New York



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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(Title Omitted in Printing)

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NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Roy L. Reardon, sworn to on May 26, 1981, and upon all the pleadings and proceedings had herein defendant United States Catholic Conference will move this Court, on the 3rd day of July, 1981 at 4:00 in the afternoon of that day, or as soon thereafter as counsel may be heard, at the United States Courthouse, Foley Square, New York, New York, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the amended complaint herein for plaintiffs' lack of standing, the lack of judicial reviewability, failure to state a claim upon which relief can be granted and the unconstitutionality of § 501(c)(3) of the Internal Revenue Code, and for such other and further relief as to this Court may seem proper and just.

Dated: New York, New York  
May 26, 1981

Respectfully submitted,

SIMPSON THACHER & BARTLETT  
Attorneys for Defendant  
United States  
Catholic Conference  
Office and P.O. Address  
One Battery Park Plaza  
New York, New York 10004  
(212) 483-9000

ROY L. REARDON,  
CONRAD K. HARPER,  
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WILFRED L. CARON,  
General Counsel  
United States Catholic Conference  
1312 Massachusetts Avenue, N. W.  
Washington, D. C. 20005  
(202) 659-6690  
Of Counsel.

INTERNAL REVENUE SERVICE  
 Department of the Treasury  
 31 Hopkins Plaza, Baltimore, MD 21201

District  
 Director

United States Catholic Conference  
 1312 Massachusetts Avenue, N.W.  
 Washington, D.C. 20005

Person to Contact:

M. Schreiber

Telephone Number:

(301) 962-4769

Refer Reply to:

EO: 7204

Date:

June 16, 1980

Dear Sir or Madam:

In a ruling dated March 25, 1946, we held that the agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in the Official Catholic Directory for 1946, are entitled to exemption from Federal income tax under the provisions of section 101(6) of the Internal Revenue Code of 1939, which corresponds to section 501(c)(3) of the 1954 Code. This ruling has been updated annually to cover the activities added to or deleted from the Directory.

The Official Catholic Directory for 1980 shows the names and addresses of all agencies and instrumentalities and all educational, charitable, and religious institutions oper-

ated by the Roman Catholic Church in the United States, its territories and possessions in existence at the time the Directory was published. It is understood that each of these is a nonprofit organization, that no part of the net earnings thereof inures to the benefit of any individual, that no substantial part of their activities is for the promotion of legislation, and that none are private foundations under section 509(a) of the Code.

You have certified that all elementary schools, high schools, and colleges listed in the Directory have a publicized policy of racial nondiscrimination as to students so that applicants of all races have equal access to each educational institution.

Revenue Procedure 75-50, published in Cumulative Bulletin 1975-2, page 587, sets forth guidelines and record-keeping requirements for determining whether private schools exempt from tax have racially nondiscriminatory policies as to students. You must comply with this Revenue Procedure.

Based on all information submitted, we conclude that the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in the Official Catholic Directory for 1980 are exempt from Federal income tax under section 501(c)(3) of the Code.

You and your subordinates are not required to file Federal income tax returns as long as a tax-exempt status is maintained. But under section 512(a)(1) of the Code, the unrelated business taxable income derived by any organization from any unrelated trade or business is subject to unrelated business income tax. If you or your subordinates are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

You are not required to file Form 990, Return of Organization Exempt from Income Tax, if you meet the exception in section 6033(a)(2)(A)(i) of the Code. Your subordinates are also not required to file Form 990 if they qualify as churches or integrated auxiliaries of churches or otherwise meet the exceptions in section 1.6033-2(g) of the Income Tax Regulations.

You and your subordinates are not liable for social security (FICA) taxes. However, you or any of your subordinates, in their own right, may file a certificate waiving exemption from taxes, Form SS-15, under the Federal Insurance Contributions Act. You and your subordinates are not liable for tax under the Federal Unemployment Tax Act (FUTA).

Donors may deduct contributions to the agencies, instrumentalities and institutions referred to above, as provided by section 170 of the Code. Requests, legacies, devises, transfers, or gifts to them or for their use are deductible for Federal estate and gift tax purposes under sections 2055, 2106 and 2522 of the Code.

Next year, within 45 days after the close of your annual accounting period, or by May 31, the date established by our letter of April 28, 1975, which gave an extension of time to file the information, please send one copy of the Official Catholic Directory for 1980 for each Internal Revenue District in which one or more of your subordinates are located, with four additional copies to this office.

Group Exemption Number 928 has been assigned to you. You are required to include this number on each Form 990 and Form 990-T required to be filed by your subordinates. Please advise your subordinates of this requirement and provide them with the Group Exemption Number.

In addition, please submit the following, annually, on or before May 31 to the

Internal Revenue Service Center  
11601 Roosevelt Boulevard  
Philadelphia, Pennsylvania 19155  
Attention: Entity Control Unit

1. A statement that the information upon which your present group exemption letter is based applies to any new subordinates;
2. A list of the names, mailing addresses, including ZIP codes, of the subordinates on your group exemption roster that during the year:
  - (a) changed names or addresses;
  - (b) were deleted from the roster;
  - (c) were added to the roster.
3. A statement that each has given you written authorization to add its name to the roster;
4. A list of those to which the Service previously issued separate ruling or determination letters relating to exemption; and
5. A statement that none of the new subordinates are private foundations as defined in section 509(a).

Please use the employer identification number assigned to you on all returns you file and in all correspondence with the Internal Revenue Service.

This is a determination letter. Please retain it with your permanent records. Thank you for your cooperation.

Sincerely yours,

/s/ Lula L. Lang  
for TEDDY R. KERN  
District Director

cc: Wilfred R. Caron, General Counsel  
United States Catholic Conference



Plaintiffs' Affidavits in Opposition to Motion to Dismiss  
(Captions Omitted in Printing)

**AFFIDAVIT OF PLAINTIFF  
ABORTION RIGHTS MOBILIZATION, INC.  
and LAWRENCE LADER**

LAWRENCE LADER, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, residing in New York City, and am a taxpayer and a registered voter.

2. I am a founder and the president of Abortion Rights Mobilization, Inc. ("ARM") which is also a plaintiff in this action. ARM, a non-profit, tax-exempt organization under § 501(c)(3) of the Internal Revenue Code, is dedicated to securing and implementing the guarantee of a woman's right to a legal abortion in the United States. We are a national organization and have conducted public education campaigns and instituted lawsuits concerning aspects of abortion rights in various parts of the nation.

3. I am a writer. I have written a number of books on abortion rights and other family planning issues, including a biography of Margaret Sanger, a book entitled "Abortion", published in 1966 and a book called "Abortion II" published in 1973. I have also been active in the abortion rights movement and was one of the founders and principal officers of the National Association to Repeal the Abortion Laws ("NARAL").

4. Throughout my research, writing and other work on abortion rights, I have come across numerous violations of the separation of church and state that have been committed by the anti-abortion forces. In recent years the problem has been compounded by the activities of the federal government which has permitted the Roman Catholic Church to violate the Constitution and the tax code and participate in political campaigns without any adverse effect on the Church's tax-exempt status.

5. I deeply and sincerely believe in the separation of church and state which is at the heart of the First Amendment. It grieves me to see the government, particularly the Internal Revenue Service, ignore the Constitution and administer the tax code in such a manner as to favor the Catholic Church.

6. The actions of the federal government in subsidizing the illegal political activities of the Catholic Church violate my right to live in a society free of a governmentally-established religion.

7. The government's position also unfairly distorts the political process and violates my and my organization's right to equal protection of the laws.

8. Because ARM is tax-exempt it cannot engage in electoral politics. This limits ARM's ability to have its program enacted. ARM is willing to accept such a limitation because its tax-exempt status assists ARM in raising funds for its activities.

9. The Catholic Church is also tax-exempt. Under the law it, too, should not be permitted to intervene in political elections. The Internal Revenue Service, however, has exempted the Church from the prohibition on electoral politics.

10. This gives the Church a double advantage which is denied to ARM and other religious institutions and abortion rights organizations. The government permits the Church to use its tax-exempt status to raise money more easily by offering tax deductions to its contributors, and then to use this tax-exempt and tax-deductible money to support or oppose candidates.

11. Because we are required to obey the law while the government allows the Church not to obey the law, Abortion Rights Mobilization, Inc. is thus denied equal protection of the law.

12. Moreover, since the government is in effect granting a subsidy to one of the chief protagonists in the abortion rights debate, the government is making it easier for that side to get its message across to voters. Since the same subsidy is denied to the Church's opponents, the government is distorting the political process in favor of the Catholic Church's position.

13. Thus the government's actions violate my right as a citizen and as a voter to participate in a fair electoral process, one that has not been weighted by the government in favor of one position or another.

14. ARM and I have brought this lawsuit, together with the other plaintiffs, to urge the Court to redress these violations of our constitutional rights under the First and Fifth Amendments and to require the government not to change our tax status, but to apply the law equally to all, including the Catholic Church.

/s/ Lawrence Lader  
LAWRENCE LADER

Sworn to before me this 14th day of July, 1981.

/s/ Marshall Beil  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
MARGARET O. STRAHL, M.D.**

MARGARET O. STRAHL, M.D., being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a voter. I reside in Pelham, New York.

2. I donate money to Abortion Rights Mobilization and to other tax-exempt organizations fighting to safeguard the right of a woman to have a legal abortion. Under the tax code, none of the money I donate to these groups can be used to aid pro-choice candidates for public office. Therefore, I also donate to pro-choice candidates, some of whom have been the subject of direct attacks by the Roman Catholic Church because of their position against abortion. Except for a small tax credit, my donations to political candidates are not tax-deductible.

3. It grieves me that the government has failed to enforce the law against the Roman Catholic Church and has permitted it to intervene in political campaigns without any effect on the Church's tax status. In my view, this constitutes an establishment of religion by the government and violates the doctrine of the separation of church and state.

4. The government's sanction of the Church's illegal activities in the political arena diminishes the effectiveness of my contributions to pro-choice organizations and candidates. The tax-exempt groups I support are prohibited from engaging in electoral politics and the candidates I support cannot raise tax-deductible contributions. The government is allowing the Church, however, to use tax-exempt money in political campaigns. Since these contributions cost the Church's donors half as much as my donations to candidates cost me, the Church and its donors can get twice as much benefit from the same dol-



lar as I can. Thus, in addition to violating my rights under the First Amendment, the government is denying me and the organizations and candidates I support equal protection of the law.

5. I am not participating in this suit to change the taxation of money I donate or to change ARM's tax status. I request only that I not be denied equal protection of the law and that my right to live in a society free of an established religion not be infringed upon. The government should be required to apply the same rules to the Catholic Church and its contributors that it applies to me.

/s/ Margaret O. Strahl  
MARGARET O. STRAHL, M. D.

Sworn to before me this 10th day of July, 1981.

/s/ Patricia A. Prisco  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
HELEN W. EDEY, M.D.**

HELEN W. EDEY, M.D., being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a voter. I reside in Vineyard Haven, Massachusetts.

2. I feel I have been severely damaged by the illegal use by the Roman Catholic Church defendants of tax-deductible money in political campaigns.

3. I strongly support organizations and political candidates who oppose restrictions on a woman's right to choose to have an abortion. Individually and with my husband I contribute thousands of dollars (\$5,000 to \$10,000 a year and often more) to candidates who support this position. None of these donations (except for the first one hundred dollars) is tax deductible. But, if my political contributions were tax deductible I, like others in my tax bracket, could afford to give twice that amount.

4. Unlike me, the Catholic Church and the people who contribute to it have been permitted to make contributions to candidates they favor using tax-deductible money. Since their tax-deductible donations cost them half as much as mine cost me, the Church and its contributions can get twice as much benefit from the same dollar as I can. This denies me equal protection of the law.

5. My husband and I give about half our income to 501(c)(3) organizations, including Abortion Rights Mobilization ("ARM"). None of this money can be used to aid "pro-choice" political candidates we favor. This puts our efforts at a significant disadvantage in comparison with the effect similar contributions can have when given to the Church. The Church can use and has used these tax-deductible contributions to support political candidates we oppose. Our money, however, cannot be used to

support political candidates we favor and who are opposed by the Church's tax-deductible dollars.

6. I do not seek in this lawsuit to change the taxation of money I give away or to change ARM's tax status. I request only that I not be denied equal protection of the law—that the Catholic Church and its contributors be required to follow the same rules I do.

STATE OF MASSACHUSETTS

ss

COUNTY OF DUKES COUNTY

/s/ Helen W. Edey  
HELEN W. EDEY

Sworn to before me this 1st day of June, 1981.

/s/ Jean Swift  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
RUTH P. SMITH**

RUTH P. SMITH, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a voter. I reside in New York, New York.

2. I have been very active in the movement to secure the right of women to have legal abortions. I also donate money to abortion rights organizations and other tax-exempt organizations that support this cause. Under the tax code, none of the money I donate to these groups can be used to aid pro-choice candidates for public office. Therefore, I also donate to pro-choice candidates, some of whom have been subject to direct attacks by the Roman Catholic Church because of their position on abortion. Except for a small tax credit, my donations to political candidates are not tax-deductible.

3. It grieves me that the government has failed to enforce the law against the Roman Catholic Church and has permitted it to intervene in political campaigns without any effect on the Church's tax status. In my view, this constitutes an establishment of religion by the government and violates the doctrine of the separation of church and state.

4. The government's sanction of the Church's illegal activities in the political arena diminishes the effectiveness of my contributions to pro-choice organizations and candidates. The tax-exempt groups I support are prohibited from engaging in electoral politics and the candidates I support cannot raise tax-deductible contributions. The government is allowing the Church, however, to use tax-exempt money in political campaigns. Since these contributions cost the Church's donors half as much as my donations to candidates cost me, the Church and its donors can get twice as much benefit from the same dol-

lar as I can. Thus, in addition to violating my rights under the First Amendment, the government is denying me and the organizations and candidates I support equal protection of the law.

5. I am not participating in this suit to change the taxation of money I donate or to change ARM's tax status. I request only that I not be denied equal protection of the law and that my right to live in a society free of an established religion not be infringed upon. The government should be required to apply the same rules to the Catholic Church and its contributors that it applies to me.

/s/ Ruth P. Smith  
RUTH P. SMITH

Sworn to before me this 10 day of July, 1981.

/s/ Elizabeth L. Hancroft  
Notary Public

# AFFIDAVIT OF NATIONAL WOMEN'S HEALTH NETWORK, INC.

BELITA COWAN, being duly sworn says:

1. The National Women's Health Network, Inc. is a plaintiff in this action.

2. I am the Executive Director of the National Women's Health Network, Inc. (hereinafter referred to as "the NWHN, Inc.").

3. The purposes of the NWHN, Inc. include research and dissemination of health information to women, encouraging women to take responsibility for their health care and improving the quality of health care. Abortion rights are integral to our purposes. The advancement of both safe and legal contraception and safe and legal abortion fall within the definition of safe health care that must be provided to the women of our country. Lack of access to safe and legal abortion impacts directly on the health status of American women.

4. NWHN also fosters research and activities in several other areas that directly effect the health of women. Among these are infertility, teenage pregnancies, child-birth technology and a myriad of other issues that are important to the health and safety of American women. Our position has always been to encourage the improvement of maternal and infant health care services so that the infant mortality rate will be lowered. It is the interest of American women to have ready access to safe child-birth facilities and give birth to healthy babies. One of our member groups, of which there are more than two hundred eighteen, is the American Foundation of Maternal and Child Health. Additionally, in our effort to aid those women who want to have children and those women who cannot have children, we have established a special committee on infertility. This has been in response to a demand. At our Board of Director's Meeting, in Febru-



ary, 1981, we held a special educational program on infertility. Our purposes, then, include freedom of choice for all women. We are extremely concerned with the safety of women in their childbearing years.

5. NWHN, Inc. is exempt from taxes under sec. 501(c)(3).

6. The dues-contributing membership of NWHN, Inc. consists both of individuals and of organizations, including clinics which provide among other care abortion services. The New Hampshire Feminist Health Center (hereinafter referred to as "the Center") is one of our many member clinics. The Center performs a wide range of reproductive health services including the performance of abortions, fertility awareness counseling, the maintenance of a twenty-four hour hotline and the education of women about natural birth control methods. The Center is engaged in a major research project on the cervical cap, a safe and effective method of birth control. The Center is working in conjunction with NWHN, Inc. on this project. The Center is also exempt from taxes under sec. 501(c)(3).

7. The National Women's Health Network would intervene in political campaigns as a means of achieving its purposes but for the fact that it would lose its exemption under sec. 501(c)(3) if it did so.

8. Upon information and belief, the New Hampshire Feminist Health Center would intervene in political campaigns but for the fact that it would lose its exemption under sec. 501(c)(3) if it did so.

9. The Roman Catholic Church's practice of intervening in political campaigns while enjoying exemption under sec. 501(c)(3) injures the NWHN, Inc. because the Church thereby gains an unfair advantage in communicating with voters and legislators about abortion. In my experience, political endorsements are an extremely

powerful way of influencing voters' opinions and actions. Because of this, an endorsement influences the political stance not only of the candidate endorsed but of many other legislators and candidates as well. NWHN, Inc.'s forbearance from such political activity is a significant detriment to accomplishing its purposes in improving the health care system for women. When the Church is permitted to make endorsements without suffering the legally prescribed financial consequences, the NWHN, Inc. is substantially harmed in carrying out its purposes since the Church is breaking the law and thereby gains an advantage, while the NWHN, Inc. has remained within the law and has thereby suffered a relative detriment making the Church's advantages unfair. If the relief sought in this action were granted, the NWHN, Inc.'s injury would be redressed. Donations to the Church's anti-choice activities would no longer be deductible by the donor. In addition, the amount of income which the Church could retain for its own purposes would be reduced by the amount of income tax due.

10. To counteract the political effects of the defendants' illegal activities, the NWHN, Inc. has been required to divert money away from activities that would directly and affirmatively increase reproductive choice such as increased expenditures on safe contraceptive methods which would lessen the need for abortion. Instead of funding such research, which NWHN, Inc. would otherwise do, the Network has had to fund education activities merely to prevent the extinction of already existing abortion rights. At the present time in excess of nine percent (9%) of our budget is spent on this endeavor. If it were possible, we would expand our budget in several areas. For example, we are only able to budget a small amount for our fertility project since we have to concentrate on preserving women's rights to safe and legal abortions. We feel that this is an undue hardship and interferes with our overall goals. It deprives our individual mem-

bers and member groups of services we would otherwise provide.

11. The NWHN, Inc. is participating in this lawsuit to urge the Court to redress the violation of the application of sec. 501(c)(3) since it has been unequally applied. We do not wish to alter our tax status. We urge only that the law be enforced.

/s/ Belita Cowan  
BELITA COWAN  
Executive Director of  
National Women's Health Network

Sworn to before me this 16th day of July, 1981.

/s/ Stuart F. Balderson  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
LONG ISLAND NATIONAL ORGANIZATION  
FOR WOMEN, NASSAU, INC.**

NORMA LEVY, being duly sworn, says:

1. I am president of the Long Island National Organization for Women, Inc. ("Nassau NOW"), a plaintiff in this action. Nassau NOW is a non-profit membership organization exempt from taxes under § 501(c)(4) of the Internal Revenue Code. We and our members are dedicated to the promotion of women's rights, including the right to have an abortion.

2. As a tax-exempt organization we are prohibited from engaging in electoral politics. We are content to abide by this restriction in exchange for our tax deduction provided that the other tax-exempt organizations who have similar restrictions are required by the government to live with them as well.

3. The government has failed to do this, however. The Internal Revenue Service has let the Roman Catholic Church engage in electoral politics without any effect on the Church's tax status.

4. This violates our right to equal protection of the laws. We are prevented from trying to influence the outcome of specific elections, but one of our chief opponents is not. This government allows the Church to be doubly effective—to be tax-exempt *and* political.

5. Thus the government provides an illegal tax shelter for the anti-abortion forces, and gives the Church an unfair advantage in the political arena.

6. As the Court is undoubtedly aware, money is a very powerful tool in politics. Since the government prohibits Nassau NOW (unlike the Catholic Church) from entering the electoral process and prevents our members (unlike donors to the Church) from deducting our po-



litical contributions, our effectiveness in influencing the political process is much diminished when compared to the Church.

7. We urge the Court to redress the governmental violation of our and our members' rights to equal protection of the laws and to require the Internal Revenue Service to enforce the law even-handedly and equally against all.

/s/ Norma Levy  
NORMA LEVY

Sworn to before me this 14th day of July, 1981.

/s/ Harriet J. Morosoff  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
RABBI ISRAEL MARGOLIES**

RABBI ISRAEL MARGOLIES, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a voter. I reside in New Jersey.

2. Since 1941 I have been an ordained rabbi of the Jewish faith. I am currently rabbi of Beth Am, the People's Temple, located in New York, New York. I also have a doctorate in theology.

3. It is a basic principle of Judaism that the individual is free to make decisions in the light of his or her own conscience. Abortion is basic to the life of a woman; to deny it would deprive her of a basic right. I am concerned about the fully developed entity that is woman. To force a woman to bring an unwanted fetus into the world is a serious abridgement of the Bible and the Constitution.

4. I have always refrained from using my religious position to support political candidates, because I feel very strongly about the separation of church and state. I believe that any such political activity by me would violate this constitutionally-established doctrine and would also be illegal under the tax code, which prohibits intervention in political campaigns by churches or temples which have tax exemptions.

5. There have been well-publicized instances in which leaders of the Catholic Church have not obeyed the law and have supported or denounced candidates from the pulpit. The Internal Revenue Service seems to have done nothing about these violations of law.

6. When the rules prohibiting religious institutions and religious leaders from participating in political campaigns are not enforced equally against all religions, this constitutes an establishment of religion by the government

in favor of whichever religious body is allowed to violate the law with impunity.

7. Thus, the government gives an extra advantage to the Roman Catholic Church, an advantage that is particularly offensive to me because I am of a different religion and the Church is using its advantage to persuade the civil authorities to adopt a doctrine which is inimical to my deeply-held religious beliefs.

8. The government, therefore, is violating my right to live in a society in which no religion is favored or established by the state and in which there is a strong wall separating religious activities from secular, political activities.

9. The government's favoritism towards the Catholic Church also denigrates my standing and the standing of my religion in the community. We are made to feel that we are second class citizens because we are not permitted to violate the law with impunity and because the government appears to consider our views not to be as worthy of attention as those of the Catholic Church.

10. I have joined this suit to urge this Court to redress this injury by requiring the government to enforce the law evenhandedly—to permit no religious institution and no religious leader to violate the tax code and to speak out from the pulpit in favor of one political party or another.

/s/ Israel Margolies  
RABBI ISRAEL MARGOLIES

Sworn to before me this 15th day of July, 1981.

/s/ Marshall Beil  
Notary Public

# **AFFIDAVIT OF PLAINTIFF REVEREND BEATRICE BLAIR**

REVEREND BEATRICE BLAIR, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States residing in New York; I am a taxpayer and a voter.

2. I am an ordained Priest of the Episcopal Church. I presently serve as Associate Rector of the Church of the Heavenly Rest in New York City.

3. I am also chair of the board of National Abortion Rights Action League ("NARAL") and on the board of the New York City Metro Religious Coalition for Abortion Rights. I also served on the board of National Planned Parenthood.

4. I have joined in this lawsuit because I believe that the government's failure to enforce the law against the Roman Catholic Church results in an unconstitutional establishment of religion. This establishment violates my sincere and deeply held belief in the separation of church and state and denigrates the status of my religion and religious beliefs.

5. I believe that humans are made in the image of God. No one should stand between each of us and God in the decision-making process. A woman has the right to make decisions in accordance with her belief of what course is best for her and all others involved.

6. In my belief and in Episcopal theology, abortion is often justified. For any number of reasons a pregnancy or a birth can result in tremendous suffering and women and families must struggle to decide whether the suffering imposed by the pregnancy or birth would be worse than termination of the pregnancy. In circumstances where it would be, it is part of Episcopalian doctrine that

women and families should be free to choose to terminate such pregnancies.

7. The Roman Catholic Church takes a different view of the morality of abortions. I understand that the Church believes abortions to be immoral and unjustifiable.

8. I do not quarrel with the Catholic Church's right to express its viewpoint. What I do object to, however, is the benefit conferred upon the Catholic Church by the government's failure to enforce the legal prohibition against using religious facilities and money for partisan political activities.

9. As I understand the tax code, a minister such as myself is prohibited from using his or her religious position to oppose political candidates. Such acts, in my view, not only violate the tax code, but would also be a violation of the separation of church and state. Because of this I have refrained from using my religious affiliation to endorse candidates although on occasion I would have liked to do so in order to aid the abortion rights movement.

10. The Internal Revenue Service, however, has permitted the Catholic Church to do just what the law does not allow it. This, in my view, constitutes an establishment of religion by the government since the state is conferring a benefit on the Catholic Church which it does not give other churches, such as the Episcopal Church.

11. That a benefit is given to the Catholic Church and denied to my church offends my very strong belief in the separation of church and state. Moreover, since the Catholic Church is using its government subsidy to put into effect a doctrine I am opposed to, the government's actions portend very grave dangers for my own religious beliefs.

12. The government's action also demeans my church's and my religion's standing and reputation in the commu-

nity. The Catholic Church is permitted to violate the law with impunity in very well-publicized instances whereas my Church and my religion conform to the law. To me and surely to members of the public at large it appears that Catholic doctrine is being favored by the government and, therefore, must be more correct than my religion's teachings.

13. The Constitution prohibits the government from favoring or establishing any one religion over any other. The government is violating this fundamental principle by permitting the Catholic Church to break the law while no one else is given the same liberty. I urge the Court to redress this substantial violation of my constitutional rights.

/s/ Beatrice Blair

REVEREND BEATRICE BLAIR

Sworn to before me this 13th day of July, 1981.

/s/ Florence Manning  
Notary Public



**AFFIDAVIT OF PLAINTIFF  
RABBI BALFOUR BRICKNER**

RABBI BALFOUR BRICKNER, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a voter and a taxpayer. I reside in New York, New York.

2. I am the Senior Rabbi of the Stephen Wise Free Synagogue in New York City and have been a Reform Jewish rabbi for nearly 30 years.

3. Under Reform Judaism, a fetus is not considered a full human being and has no juridical personality of its own. Jewish law does not equate abortion with murder. While Jewish law teaches a reverend and responsible attitude towards the question of life and thus views abortion with great concern, under Jewish law, reasons affecting basic life and health may sanction or even require therapeutic abortion.

4. These beliefs are contrary to those of the Roman Catholic Church as well as other religious groups. I respect and welcome that diversity. The wall of separation between church and state erected by our Constitution encourages religious diversity and puts all religious beliefs on an equal footing with regard to the state.

5. Under the First Amendment the state must refrain from favoring any one religion over another. This is a basic tenet of freedom in this country and one with which I am most concerned. This freedom, however, is under severe attack because of the government's refusal to enforce the tax code and the Constitution against the Roman Catholic Church.

6. When the Internal Revenue Service does not penalize the Church when it illegally supports or opposes candidates for election, this government undermines the principle of church-state separation.

7. The government is in effect creating a climate in which the views of one religion—Catholicism—is tacitly but noticeably favored over others. The disfavored religions, such as Judaism are made to feel like second class citizens whose status is not as significant or as important as that of the Catholic Church.

8. The government's attitude threatens more than my religious beliefs; it also represents a health threat of the Jewish people in this country. Jewish women are particularly subject to Tay-Sachs disease—a genetic infirmity fatal to infants. No Tay-Sachs child has ever lived beyond five years of age and they die an agonizing death.

9. Tay-Sachs disease cannot be detected until the second trimester of pregnancy, but once diagnosed, the availability of abortion allows the parents to choose not to bring into this world a child with such a tragic disease.

10. The government's favoring of the Catholic Church, however, threatens to eliminate the ability of Jewish men and women to take therapeutic action in time to avert this terrible toll on them and their families.

11. In addition to my work at the Stephen Wise Free Synagogue and in other Jewish organizations, I am chairman of the national issues committee of the New York State Liberal Party. The Liberal Party sponsors candidates for election to public offices in New York State.

12. My involvement in this party is as a private citizen. I would not and could not commit my congregation or any other religious institution with which I am associated to a candidate, and I would not and could not tell my congregation how to vote. This would be in violation of the Constitution and I am a strict church-state separationist.

13. The Liberal Party has also been harmed by the government's favoritism of the Catholic Church. My party cannot offer tax deductions to the people who con-

tribute to our candidates (beyond the small tax credit recently added to the tax code). The government, however, is allowing the Catholic Church to use fully tax-exempt and tax-deductible monies to oppose candidates of the Liberal Party. The government's failure to enforce the law against the Church has thus resulted in a significant inequality: candidates opposed to the Liberal Party's position on abortion can receive government-subsidized money in their campaigns—a subsidy we are flatly denied. And in political campaigns, money is an extremely important component of success.

14. I have joined this lawsuit to redress this government-established inequity in the political process and violation of church and state. I appeal to the Court to search the Constitution and the Court's conscience to preserve the freedoms which are so dear to all of us.

/s/ Rabbi Balfour Brickner  
RABBI BALFOUR BRICKNER

Sworn to before me this 14th day of July, 1981.

/s/ Marshall Beil  
Notary Public

# **AFFIDAVIT OF PLAINTIFF REVEREND ROBERT HARE**

REVEREND ROBERT HARE, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States and reside in Scarborough, New York and am a taxpayer and a voter.

2. I was ordained as a Presbyterian minister in 1962. I am presently Pastor of the Scarborough Presbyterian Church in Westchester County, New York.

3. Abortion is a tragic choice which may be justified in appropriate circumstances. I am a Presbyterian and my religious and theological grounding for this view is rooted in judgments under the grace of God, under which we all live. This means that in a world of tragedy and sin and in a world of redemptive moments, we always live our lives under both the grace and the judgment of God, and we are enabled by God to make judgments about the best course to follow in complex and trying circumstances.

4. Biblical material is related to my stand on this issue. It is relevant to the question of morality of terminating a pregnancy. The question of morality hinges on an understanding of whether and when the human fetus has become, in fact, fully a human person. My biblical understanding led me to the conclusion that personhood is a divinely given quality in the continuum of life. At what specific point in the continuum it is given we do not precisely know, nor do the scriptures of the Old and New Testament precisely tell us. The Roman Catholic Church asserts that personhood begins from conception, but I don't believe that adequate scholarship of the Old and New Scriptures can allow this conclusion to stand.

5. I am also president of Religious Leaders for Free Choice of Greater Metropolitan New York and a member of various organizations which promote a woman's right to choose to have an abortion.



6. I have never utilized my role as a clergyman to support pro-choice candidates, nor would I want to engage in politics as the pastor of the Scarborough Presbyterian Church.

7. It injures me when the government permits the Catholic Church to become illegally involved in political campaigns. The Church's acts violate the tax code and the constitutionally-based doctrine of separation of church and state.

8. The government's failure to enforce the law against the Catholic Church offends my deeply held and sincere belief in the separation of church and state. The favoritism shown by government to the Catholic Church but not to other religions constitutes, in my view, an establishment of religion in violation of the First Amendment.

9. This establishment of religion by the federal government further violates my rights in that it demeans the status of my own religion and religious beliefs in the community. It offends the dignity of my religion when the state follows a course of action which promotes the activities and views of one church while prohibiting similar activities by every other church. It makes the rest of us appear to be second-class citizens.

10. I urge the Court to resurrect the wall of separation between the church and the state and require the government to enforce the law equally against all religious institutions.

/s/ Robert W. Hare  
REVEREND ROBERT HARE

Sworn to before me this 14th day of July, 1981.

/s/ Marshall Beil  
Notary Public

**AFFIDAVIT OF PLAINTIFFS  
REV. MARVIN G. LUTZ AND  
WOMEN'S CENTER FOR REPRODUCTIVE HEALTH**

REVEREND MARVIN G. LUTZ, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a voter, and reside in Jacksonville, Florida. I am also Executive Director of the Women's Center for Reproductive Health of Jacksonville, which is also a plaintiff in this action.

2. Since 1963, I have been an ordained Presbyterian minister.

3. In 1970 the 110th General Assembly of the Presbyterian Church in the United States adopted a position on abortion which recognized the freedom of a woman to choose to have an abortion as an alternative for terminating a pregnancy. After much research and debate the General Assembly recognized that the needs of the mother may at times take precedence over the needs of an embryonic and unformed child, and concluded that on occasion the wilfull termination of a pregnancy is morally justifiable.

4. Accordingly, the General Assembly adopted on behalf of the Presbyterian Church in the United States a position paper which recognized the right of women to make individual choices and encouraged the Church to provide counselling and assistance to women and families faced with such choices. The position paper also called for the provision of medical care and medical services to all women who desire and need it, and for a change in the laws of this nation to reflect the principles that are set forth in the Church's position paper.

5. The primary function of my ministry in the last few years has been to put these principles of the Presbyterian Church into effect. Thus, I helped found and am now the Executive Director of the Jacksonville Clergy



Consultation Service, Inc., a tax-exempt organization which provides counselling for families and women with unintended pregnancies. I am past-president of the Florida Abortion Council, president of the North Florida Abortion Rights Action League, and active in a number of other abortion rights organizations.

6. My role as a minister can be summarized, thus, as being a public advocate for the religious freedom and civil liberties of women to terminate pregnancies by birth or by abortion. In such a role I have appeared before the Florida Legislature and have made numerous public statements to the media and to others.

7. Within this public ministry, I have refrained from endorsing candidates or intervening in political campaigns for public office. These activities would jeopardize my Church's status as a tax-exempt organization under the Internal Revenue Code and would violate the principles of church-state separation underlying the First Amendment which I hold very dear.

8. The Roman Catholic Church has a quite different position on abortion. It appears to me that the Catholic Church has not hesitated to use the power of its pulpit to influence political elections. These violations of the law by the Catholic Church have been overlooked by the Internal Revenue Service which has allowed the Catholic Church to become political without any adverse effect on its tax status.

9. In my view the tacit exception to the tax code that the government has granted to the Catholic Church constitutes an establishment of religion—the state is favoring the Catholic Church over the Presbyterian Church and others who have different positions on abortion. This violates my right to live in a society free of any such established religion.

10. The government's position in addition denigrates and demeans the teachings of the Presbyterian Church

and my ministry which are opposed to those of the Catholic Church. Since we are not granted the same benefit by the government that the Church has been granted, we are made to appear to be second class citizens.

11. The government's position has also adversely affected the work of the Women's Center for Reproductive Health which is a project of the Jacksonville Clergy Consultation Service. In response to the position paper adopted by the General Assembly, we provide medical services (including abortions), counselling and support to women making decisions about pregnancy, abortion and family life.

12. The success of the Catholic Church's government-backed program has been to cut off all Medicaid abortions. This has cost our clinic thousands and thousands of dollars. Were the Catholic Church's government-subsidized campaign to be entirely successful and abortions made illegal again, this would prohibit Presbyterian and other women from exercising their religious beliefs to choose to have an abortion. It would also put our clinic out of business.

13. The government's subsidy to the Catholic Church, therefore, injures my right to practice my religion and to live in a society in which no religion is favored by the state. I urge the Court to require the government to enforce the law evenhandedly and to require the Catholic Church to abide by the same rules as the rest of us must do.

/s/ Marvin G. Lutz  
MARVIN G. LUTZ

Sworn to before me this 10th day of July, 1981.

/s/ Janis Conston-Carr  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
JENNIE ROSE LIFRIERI**

JENNIE ROSE LIFRIERI, being duly sworn, says:

1. I am a plaintiff in this action. I reside in Hastings-on-Hudson, New York. I am a citizen of the United States, a taxpayer and a voter.

2. I am a practicing Roman Catholic. In fulfillment of the requirements of our faith, my family, among other activities, contributes money to the Church. I disagree with the position on abortion taken by the Church. I believe that, properly interpreted, the principles of Catholicism permit abortion under some circumstances.

3. As I understand the law, the Church cannot endorse or attack political candidates and still be exempt from taxes. Yet the Church does this and does not pay taxes.

4. When the government allows the Church to do this, I am harmed. The Roman Catholic Church is being allowed to use my donations which are religiously compelled, for illegal activities. My money should be used for religious and not political purposes.

5. The United States Constitution separates the church and the state. This doctrine is an important part of our freedom. When the government allows the Church to cross over the line and to extend its power into the voting booth, my rights to live in a society that believes in freedom of religion are damaged.

6. Since there is no redress within the Church, I am asking the Court to require the government to enforce the law to ensure that my money is not spent illegally.

/s/ Jennie Rose Lifrieri  
JENNIE ROSE LIFRIERI

Sworn to before me this 10th day of July, 1981.

/s/ Marshall Beil  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
EILEEN WALSH**

EILEEN WALSH, being duly sworn, says:

1. I am a plaintiff in this action. I reside in Seaford, New York. I am a citizen of the United States, a taxpayer and a voter.

2. I am a practicing Roman Catholic. In fulfillment of the requirements of the Catholic faith, I, among other activities, contribute money to the Church. I disagree with the position on abortion taken by the Church. I believe that, properly interpreted, the principles of Catholicism permit abortion under some circumstances.

3. As I understand the law, the Church cannot endorse or attack political candidates and still be exempt from taxes. Yet the Church does this and does not pay taxes.

4. When the government allows the Church to do this, I am harmed. The Roman Catholic Church is being allowed to use my donations which are religiously compelled, for illegal activities. My money should be used for religious and not political purposes.

5. The United States Constitution separates the church and the state. This doctrine is an important part of our freedom. When the government allows the Church to cross over the line and to extend its power into the voting booth, my rights to live in a society that believes in freedom of religion are damaged.

6. Since there is no redress within the Church, I am asking the Court to require the government to enforce the law and to ensure that my money is not spent illegally.

/s/ Eileen Walsh  
EILEEN WALSH

Sworn to before me this 14th day of July, 1981.

/s/ Marshall Beil  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
PATRICIA SULLIVAN LUCIANO**

PATRICIA SULLIVAN LUCIANO, being duly sworn, says:

1. I am a plaintiff in this action. I reside in Seaford, New York. I am a citizen of the United States, a taxpayer, and a voter.

2. I am a practicing Roman Catholic. In fulfillment of the requirements of the Catholic faith, I, among other activities, contribute money to the Church.

3. I disagree with the position on abortion taken by the Church. I believe that, properly interpreted, the principles of Catholicism permit abortion under some circumstances. When I attend Church, however, I am frequently subjected to illegal one-sided electioneering against political candidates who, like me, do not support the Church's position on abortion.

4. As I understand the law, the Church cannot endorse or attack political candidates and still be exempt from taxes. Yet the Church does this and still does not pay taxes.

5. When the government allows the Church to do this, I am harmed. The Roman Catholic Church is being allowed to use my donations which are religiously compelled, for illegal activities. My money should be used for religious and not political purposes.

6. The United States Constitution separates the church and the state. This doctrine is an important part of our freedom. When the government allows the Church to cross over the line and to extend its power into the voting booth, my rights to live in a society that believes in freedom of religion are damaged.

7. Since there is no redress within the Church, I am asking the Court to require the government to enforce

the law and to ensure that my money is not spent illegally.

/s/ Patricia Sullivan Luciano  
PATRICIA SULLIVAN LUCIANO

Sworn to before me this 15 day of July, 1981.

/s/ Marshall Beil  
Notary Public



**AFFIDAVIT OF PLAINTIFF  
MARCELLA MICHALSKI**

MARCELLA MICHALSKI, being duly sworn, says:

1. I am a plaintiff in this action. I reside in Pittsburgh, Pennsylvania. I am a citizen of the United States, a taxpayer and a voter.

2. I am a practicing Roman Catholic. In fulfillment of the requirements of the Catholic faith, I, among other activities, contribute money to the Church. I disagree with the position on abortion taken by the Church. I believe that, properly interpreted, the principles of Catholicism permit abortion under some circumstances.

3. As I understand the law, the Church cannot endorse or attack political candidates and still be exempt from taxes. Yet the Church does this and does not pay taxes.

4. When the government allows the Church to do this, I am harmed. The Roman Catholic Church is being allowed to use my donations which are religiously compelled, for illegal activities. My money should be used for religious and not political purposes.

5. The United States Constitution separates the church and the state. This doctrine is an important part of our freedom. When the government allows the Church to cross over the line and to extend its power into the voting booth, my rights to live in a society that believes in freedom of religion are damaged.

6. Since there is no redress within the Church, I am asking the Court to require the government to enforce the law and to ensure that my money is not spent illegally.

/s/ Marcella Michalski  
MARCELLA MICHALSKI

Sworn to before me this 11th day of July, 1981.

/s/ [Illegible]  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
CHRIS NIEBRZYDOWSKI**

CHRIS NIEBRZYDOWSKI, being duly sworn, says:

1. I am a plaintiff in this action. I reside in Pittsburgh, Pennsylvania. I am a citizen of the United States, a taxpayer and a voter.

2. I am a practicing Roman Catholic. In fulfillment of the requirements of the Catholic faith, I, among other activities, contribute money to the Church. I disagree with the position on abortion taken by the Church. I believe instead that the principles of Catholicism permit women to use their conscience as a guide in the choice of whether or not to have an abortion.

3. As I understand the law, the Church cannot endorse or attack political candidates and still be exempt from taxes. Yet the Church does this and does not pay taxes.

4. When the government allows the Church to do this, I am harmed. The Roman Catholic Church is being allowed to use my donations which are religiously compelled, for illegal activities. My money should be used for religious and not political purposes.

5. The United States Constitution separates the church and the state. This doctrine is an important part of our freedom. When the government allows the Church to cross over the line and to extend its power into the voting booth, my rights to live in a society that believes in freedom of religion are damaged.

6. Since there is no redress within the Church, I am asking the Court to require the government to enforce

the law and to ensure that my money is not spent illegally.

/s/ Chris Niebrzydowski  
CHRIS NIEBRZYDOWSKI

Sworn to before me this 15th day of July, 1981.

/s/ [Illegible]  
Notary Public

**AFFIDAVIT OF PLAINTIFF  
KAREN DeCROW**

KAREN DECROW, being duly sworn, says:

1. I am a plaintiff in this action. I am a United States citizen, a taxpayer and a registered voter. I reside in Syracuse, New York.

2. I have been a leader in the feminist movement since 1967. One of my highest priorities, and that of the feminist movement, is complete and total freedom of every woman to have the right to choose any form of contraception or abortion she selects.

3. I was the national president of the National Organization for Women ("NOW") from 1974 through 1977. At that time NOW conducted its work on feminist issues, including abortion rights, without the financial benefits that tax-exempt religious organizations had. Unlike the Catholic Church, we could not offer our donors the ability to deduct donations they made to NOW from their personal income tax.

4. This put us at a distinct disadvantage in raising funds since contributions to our organization cost our donors much more than similar contributions cost donors to the Catholic Church. Thus our ability to affect the outcome of elections was diminished by governmental action.

5. I am very interested in politics and, in fact, ran as the Liberal Party candidate for mayor of Syracuse in 1969. I anticipate running for political office again. My views on feminist issues, including abortion rights, are well-known and would undoubtedly be a factor in any political campaign I conduct.

6. Under the law, I would not be able to offer any contributor to my campaign a tax deduction (beyond a small tax credit). The Catholic Church, however, could

oppose me and, because of the government's failure to enforce the law against the Catholic Church, offer tax deductions to people who wish to contribute to my defeat.

7. This government policy thus places me at a significant financial and political disadvantage, and inhibits my ability to enter a political campaign for public office.

8. As a taxpayer, a voter and an attorney, I have always assumed that one of the basic tenets of law in this country—one that is embodied in the First Amendment to the Constitution—is the separation of church and state. It grieves me to see the government violate the Constitution and establish the Catholic Church as the state's favorite religion.

9. I have joined this lawsuit to request that the Court uphold the fundamental constitutional doctrine of church-state separation and redress the harm that I have faced and continue to face as a result of the inequitable enforcement of the tax code by the Internal Revenue Service.

/s/ Karen DeCrow  
KAREN DECROW

Sworn to before me this 14 day of July, 1981.

/s/ Norman F. Smitts  
Notary Public

# **AFFIDAVIT OF PLAINTIFF SUSAN SHERER**

SUSAN SHERER, being duly sworn, says:

1. I am a plaintiff in this action. I am a citizen of the United States, a taxpayer and a registered voter. I live in Plainview, New York.

2. I have been very active in the abortion rights movement holding a number of important positions in organizations in New York and on Long Island where I live.

3. Throughout my work on abortion rights I have been repeatedly dismayed at the violations of the separation of church and state that have been committed by the anti-abortion forces. The problem has been compounded by the federal government which has permitted the Roman Catholic Church to violate the Constitution and the tax code and participate in political campaigns without any adverse effect on its tax deductible status.

4. I believe passionately in the First Amendment which separates church and state in this society. It grieves me to see the government ignore the law of the land and favor the Catholic Church in the administration of the tax code.

5. The government's position also unfairly distorts the political process. By granting a government subsidy to one of the protagonists in the fierce debate on abortion rights, but not to others, the government makes it easier for that side to raise money and to get its message across to voters.

6. This violates my right as a citizen and a voter to participate in a fair electoral process, free of the inequitable imposition by the government of burdens and advantages on the participants in that process.



7. I urge the Court to redress these violations by requiring the government to apply the law equally to all.

/s/ Susan Sherer  
SUSAN SHERER

Sworn to before me this 13th day of July, 1981.

/s/ James H. Bumstead  
Notary Public

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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80 Civ. 5590 (RLC)

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,  
*Plaintiffs,*

—against—

DONALD T. REGAN, Secretary of the Treasury;  
ROSCOE L. EGGER, JR., Commissioner of Internal Revenue,  
*Defendants.*

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NOTICE OF DEPOSITION

Please take notice that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, plaintiffs will take the deposition upon oral examination of the United States Catholic Conference, whose address is 1312 Massachusetts Avenue, N.W., Washington, D.C., by its custodian of records, before a notary public or other person authorized to administer oaths, at 10:00 a.m. on March 21, 1983, at the Office of the United States Attorney for the District of Columbia, Room 2125, United States Courthouse, 3rd and Constitution Avenue, N.W., Washington, D.C. The deposition will continue from day to day until completed.

Please take further notice that the respondent will be served with a subpoena pursuant to which he will be asked to produce at the deposition the documents identified in the annexed Schedule A.

You are invited to attend and cross examine.

Dated: New York, New York  
February 18, 1983

Yours, etc.

KARPATKIN POLLET PERLMUTTER  
& BEIL

By /s/ Marshall Beil  
MARSHALL BEIL  
Attorneys for Plaintiffs  
708 Third Avenue  
New York, New York 10017  
Tel. (212) 557-4700

TO: William J. Brennan Esq.  
Assistant United States Attorney  
Attorney for Defendant  
One St. Andrew's Plaza  
New York, New York 10007  
Tel. (212) 791-1049

## SCHEDULE A

### *Definitions*

1. "Document" shall mean any written material, whether typed, handwritten, printed or otherwise recorded, and all tangible things from which information can be processed or transcribed, whether in draft or otherwise, whether or not sent or received, including, without limitation, the original, a copy (if the original is not available) and any non-identical copy (whether different from the original because of underlining, editing marks, notes made on or attached to such copy or otherwise) as well as all underlying supporting or preparatory material and drafts thereof, now in defendants' possession, custody, or control, or available to defendants, their counsel, agents, or representatives.

2. "Documents relating to" a subject shall mean, unless otherwise stated, each document which constitutes, refers or pertains to, discusses, embodies, records, evidences, comments upon or contains any information relating in any way to that subject.

3. "Communication" shall mean any correspondence, memoranda, conversation, meeting, comment, statement, remark, discussion, telephone communication or other form of communication, whether oral or written.

4. "USCC" shall mean the United States Catholic Conference, Inc., and its officers, directors, employees, agents, representatives, attorneys, accountants, and members.

5. "NCCB" shall mean the National Conference of Catholic Bishops, and its officers, directors, employees, agents, representatives, attorneys, accountants, and members thereof.

6. "The Pastoral Plan" means The Pastoral Plan for Pro-Life Activities as approved by the USCC/NCCB on November 20, 1975.

7. Unless the context otherwise clearly requires, documents in each category are to be produced for all years commencing January 1, 1973 to the date of production of the materials called for in this subpoena.

*Documents To Be Produced*

1. The Pastoral Plan and any drafts thereof which had been circulated to members of the NCCB or the USCC prior to November 20, 1975.

2. The minutes of the USCC/NCCB November 1975 meetings concerning the discussion and adoption of the Pastoral Plan.

3. Documents or information describing or identifying USCC and NCCB members, committees and senior staff personnel who have or have had responsibility for implementing Part IV of the Pastoral Plan ("The Pro-Life Effort in the Congressional District"), including directories or organization charts.

4. Any documents issued, circulated or promulgated by the USCC or the NCCB regarding the implementation of Part IV the Pastoral Plan.

5. Documents maintained by the USCC or the NCCB which reflect the implementation of Part IV of the Pastoral Plan or the activities of congressional district pro-life groups.

6. Church Bulletins, Clergy Bulletins, Pastoral letters, directives, memoranda, or similar documents issued or promulgated by any member of the NCCB or USCC regarding (a) the implementation of Part IV of the Pastoral Plan or the activities of congressional district pro-life groups; or (b) the support or opposition to candidates for public office or political party position.

7. The 1976 statement issued by the NCCB entitled "Political Responsibility: Reflections on an Election Year."

8. a. The minutes of meetings, in 1976 between the USCC or the NCCB and any candidate for president of the United States.

b. The text of any public statements or press conferences issued or held by the USCC, the NCCB, or any members thereof with regard to such meetings with presidential candidates or the presidential election of 1976 generally.

c. The minutes of any meetings of the USCC or the NCCB at which the meetings, statements or conferences described in 8.a or 8.b were discussed.

9. Documents relating to or identifying the names and present whereabouts of each director or president and executive secretary of each state Catholic conference, and the bishop or archbishop and director of pro-life activities or the human life coordinators, for the following states, dioceses or archdioceses from 1974 to the present:

<i>States</i>	<i>Dioceses or Archdioceses</i>
California	Arlington, Va.
Florida	Baltimore, Md.
Iowa	Brooklyn, N.Y.
Maryland	Fargo, N. Dakota
Massachusetts	Harrisburg, Pa.
Michigan	New York, N.Y.
Minnesota	Pittsburgh, Pa.
Missouri	Philadelphia, Pa.
New Jersey	Richmond, Va.
New York	Rockville Center, N.Y.
North Dakota	St. Paul, Minn.
Pennsylvania	St. Cloud, Minn.
South Dakota	San Diego, Calif.
Texas	San Antonio, Texas
Virginia	St. Louis, Mo.
Wisconsin	Sioux Falls, S. Dakota
	Washington, D.C.
	Worcester, Mass.



10. Documents which reflect any financial support by the USCC, the NCCB, or any state Catholic conference, archdiocese, diocese, or parish church, for, or involvement of any church personnel (that is, persons who are members of or employed by the NCCB, USCC or any state Catholic conference, archdiocese, diocese or parish church) in, the activities of the following organizations:

National Committee for a Human Life Amendment  
 Life Amendment Political Action Committee  
 National Right to Life Committee  
 National Right to Life Political Action Committee  
 New York State Right to Life Committee  
 Minnesota Citizens Concerned for Life  
 Missouri Citizens for Life  
 Missouri Citizens for Life Political Action Committee  
 Celebrate Life Committee (Commack, N.Y.)  
 Iowa Pro-Life Action Council  
 Committee of Ten Million  
 Virginia Society for Human Life

11. Documents reflecting any communications between the USCC, the NCCB, any member of the NCCB or any state Catholic conference, archdiocese, diocese, or parish church, investigation, and the Internal Revenue Service concerning any inquiry, request for information, request for a ruling, of or concerning any alleged or purported political activity or any act alleged or purported to be evidence of support for or opposition to candidates for public office or political party position.

12. Communications, memoranda, directives, letters or any similar documents (other than privileged attorney-client communications) circulated within the USCC or the NCCB or among or between the USCC, the NCCB, or any member or employee of the NCCB or USCC, and any state Catholic conference, diocese, archdiocese or parish church, concerning or monitoring the meaning and effect of, and compliance or lack of compliance with,

the provisions of § 501(c)(3) of the Internal Revenue Code with respect to political activity, or support for or opposition to candidates for political office.

13. Documents relating to any tax or information returns filed by the USCC or NCCB with the Internal Revenue Service.

14. Documents relating to any application filed by or on behalf of the USCC or the NCCB, or any predecessor organization thereof, with the Internal Revenue Service or other federal government agency for tax-exempt status under § 501(c)(3) of the Internal Revenue Code, without regard to the date on which any such application was filed, including, without limitation, all correspondence, memoranda or other communications relating to the consideration or approval by the Internal Revenue Service of any such application.

15. Documents between the USCC or the NCCB or any member or employee thereof and any of the organizations listed in paragraph 10 of this Schedule A relating to (a) the implementation of Part IV of the Pastoral Plan; or (b) the support of or opposition to candidates for public office or political party position.

16. Documents between the USCC or the NCCB or any member or employee thereof and any person who was, at the time such document was sent, an announced candidate for public office.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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(Title Omitted in Printing)

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**NOTICE OF DEPOSITION**

Please take notice that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, plaintiffs will take the deposition upon oral examination of the National Conference of Catholic Bishops, whose address is 1312 Massachusetts Avenue, N.W., Washington, D.C., by its custodian of records, before a notary public or other person authorized to administer oaths, at 2:00 p.m. on March 21, 1983, at the Office of the United States Attorney for the District of Columbia, Room 2125, United States Courthouse, 3rd and Constitution Avenue, N.W., Washington, D.C. The deposition will continue from day to day until completed.

Please take further notice that the deponent will be served with a subpoena pursuant to which he will be asked to produce at the deposition the documents identified in the annexed Schedule A.

You are invited to attend and cross-examine.

Dated: New York, New York  
February 28, 1983

Yours, etc.

KARPATKIN POLLET PERLMUTTER  
& BEIL

By: /s/ Marshall Beil  
MARSHALL BEIL  
Attorneys for Plaintiffs  
708 Third Avenue  
New York, New York 10017  
Tel. (212) 557-4700

TO: William J. Brennan Esq.  
Assistant United States Attorney  
Attorney for Defendants  
One St. Andrews Plaza  
New York, New York 10007  
Tel. (212) 791-1049

(Schedule A, which is identical to the Schedule appearing at pages 69-73 of the Joint Appendix, omitted in printing.)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 80 Civ. 5590

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,  
Plaintiffs  
vs.

DONALD T. REGAN, Secretary of the Treasury, *et ano.*,  
Defendants,

TO United States Catholic Conference, by its Custodian  
of Records

1312 Massachusetts Avenue, N.W., Washington, D.C.

YOU ARE COMMANDED to appear at the Office of  
the United States Attorney, the District of Columbia,  
Room 2125,\*\* in the city of Washington, D.C., on the  
21st day March, 1983, at 10:00 o'clock A.M. to testify on  
behalf of the plaintiffs at the taking of a deposition in the  
above entitled action pending in the United States Dis-  
trict Court for the Southern District of New York and  
bring with you

The documents described in the annexed Schedule A.

Dated Feb. 28, 1983

Mar. 2, 1983

Karpatkin Pollet  
Perlmutter & Beil  
Attorney for Plaintiffs  
708 Third Avenue, New York, N.Y. 10017

Clerk

By /s/ Oliver V. Jackson, Jr.  
Deputy Clerk

\*\* U.S. Courthouse, 3rd & Constitution Avenue

Any subpoenaed organization not a party to this suit is  
hereby admonished pursuant to Rule 30(6), Federal  
Rules of Civil Procedure, to file a designation with the  
court specifying one or more officers, directors, or man-  
aging agents, or other persons who consent to testify on  
its behalf, and shall set forth, for each person designated,  
the matters on which he will testify or produce documents  
or things. The persons so designated shall testify as to  
matters known or reasonably available to organization.

\* \* \* \*

RETURN ON SERVICE

Received this subpoena at 839 17th St., N.W., Wash.,  
D.C. on E.B. Williams served it on the within named  
E.B. Williams, Managing Partner; Williams & Connally  
by delivering a copy to him and tendering to him the fee  
for one day's attendance and the miles allowed by law.<sup>1</sup>

By /s/ David de Clue  
DAVID DE CLUE

Dated: March 2, 1983

Service Fees

Travel .....	
Services .....	\$15.00
Total .....	\$15.00

Subscribed and sworn to before me, a Notary Public  
this 2nd day of March, 1985.

/s/ \_\_\_\_\_

(Schedule A, which is identical to the Schedule appear-  
ing at pages 69-73 of this Joint Appendix, omitted in  
printing.)



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 80 Civ. 5590

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,  
Plaintiffs  
vs.

DONALD T. REGAN, Secretary of the Treasury, *et ano.*,  
Defendants,

TO National Conference of Catholic Bishops, by its Custodian of Records

1312 Massachusetts Avenue, N.W., Washington, D.C.

YOU ARE COMMANDED to appear at the Office of the United States Attorney, the District of Columbia, Room 2125,\*\* in the city of Washington, D.C., on the 21st day March, 1983, at 2:00 o'clock P.M. to testify on behalf of the plaintiffs at the taking of a deposition in the above entitled action pending in the United States District Court for the Southern District of New York and bring with you

The documents described in the annexed Schedule A.

Dated Feb. 28, 1983

Mar. 2, 1983

Karpatkin Pollet  
Perlmutter & Beil  
Attorney for Plaintiffs  
708 Third Avenue, New York, N.Y. 10017

Clerk

By /s/ Oliver V. Jackson, Jr.  
Deputy Clerk

\*\* U.S. Courthouse, 3rd & Constitution Avenue

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to organization.

\* \* \* \*

RETURN ON SERVICE

Received this subpoena at 839 17th St., N.W., Wash., D.C. on E.B. Williams served it on the within named E.B. Williams, Managing Partner; Williams & Connally by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law.<sup>1</sup>

By /s/ David de Clue  
DAVID DE CLUE

Dated: March 2, 1983

Service Fees

Travel .....	
Services .....	\$15.00
Total .....	\$15.00

Subscribed and sworn to before me, a Notary Public this 2nd day of March, 1983.

/s/ \_\_\_\_\_

(Schedule A, which is identical to the Schedule appearing at pages 69-73 of this Joint Appendix, omitted in printing.)

*Abortion Rights Mobilization, Inc., et al. against Donald T. Regan, Secretary of the Treasury; Roscoe L. Eggers, Jr., Commissioner of Internal Revenue, et al.*

80 Civ. 5590 (RLC)

### ENDORSEMENT

The motion to quash plaintiffs' subpoenas is summarily denied. I have doubts that if the requested stay is granted, an analysis of the pertinent issues in this case will be produced in *Wright v. Regan* that will benefit the parties. The facts do not appear close enough to those here for that decision to be helpful. I, therefore, will not grant the stay. However, the parties may conserve their resources by agreeing on a schedule of discovery that provides for the least costly discovery activities over the next several months. By that time, the Supreme Court may have spoken and the impact of *Wright v. Regan* on the remainder of the discovery can be assessed.

If the parties have difficulty in concretizing this suggestion, you are invited to arrange for a conference with the court through my deputy clerk and perhaps the court can be of assistance.

IT IS SO ORDERED.

Dated: New York, New York  
April 3, 1984

/s/ Robert L. Carter  
ROBERT L. CARTER  
U.S.D.J.

[Filed Apr. 4, 1984]

*Abortion Rights Mobilization, Inc., et al. —against— James A. Baker, III, Secretary of the Treasury and Roscoe L. Egger, Jr., Commissioner of Internal Revenue*

80 Civ. 5590 (RLC)

### ENDORSEMENT

Plaintiffs move that the court find the United States Catholic Conference ("USCC") and the National Conference of Catholic Bishops ("NCCB") in contempt for failure to comply with a subpoena to produce various documents and a court order mandating compliance.

The subpoena seeks production of a variety of documents already in the public realm (e.g. Pastoral Plan, documents circulated in connection therewith, church bulletins, etc.). Respondents express concern about First Amendment infractions and seek delay in responding to the subpoena in the apparent hope and anticipation that an appellate court will reverse this court's substantive ruling in the case, thereby, removing the necessity for compliance to the subpoena by respondents. The problem is that although the government may succeed in reaching the appellate court on the merits, its prospects are not good. Respondents, therefore, have to face the reality that they must confront this issue on their own, without reliance of the government's efforts to overturn the court's ruling that the case go forward to trial.

The documents sought in paragraph 2 and paragraph 8c of the section of the subpoena entitled *Documents to Be Produced* are the only documents which could conceivably trench on First Amendment considerations. Those documents need not be produced at this time. Plaintiffs are ordered to narrow their request as to these items, and both sides are to present their views on whether required production of these items even as more narrowly and precisely defined by plaintiffs would violate

the constitutional protection afforded religious beliefs. The remainder of the requests are not in that category. There remains no justifiable excuse for refusal to abide by the court's order.

There is no claim that plaintiffs in serving the subpoena have failed to comply with Federal Rules of Civil Procedure or the local rules of this court. Plaintiffs have used the proper method for discovery vis-a-vis a non-party. See e.g. *In re Franklin National Bank Securities Litigation*, 574 F.2d 662, 668 (2d Cir. 1978). Accordingly, treating the USCC and NCCB filings as a motion to quash, the motion is denied. *Sony Corporation, et al. v. S.W.I. Trading, Inc.*, 104 F.P.D. 535, 542 (S.D.N.Y. 1985) (Edelstein, J.).

While I will not grant the motion to hold the USCC and the NCCB in contempt at this time, USCC and NCCB are ordered to comply with the subpoena forthwith. In the event there is a continued refusal or failure to obey the court's order, plaintiff may renew the motion.

IT IS SO ORDERED.

Dated: New York, New York  
September 4, 1985

/s/ Robert L. Carter  
ROBERT L. CARTER  
U.S.D.J.

[Filed Sept. 5, 1985]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

80 Civ. 5590 (RLC)

ABORTION RIGHTS MOBILIZATION, INC., et al.,  
Plaintiffs,

—against—

JAMES A. BAKER, III, Secretary of the Treasury, and  
ROSCOE L. EGGER, JR., Commissioner of Internal Revenue  
Defendants.

[Filed Nov. 20, 1985]

ORDER

In light of (a) the action of the Second Circuit with regard to the defendants' petition for a writ of prohibition or mandamus and (b) plaintiffs' counsel's letter to the court assuring that plaintiffs shall refrain from extrajudicial use of materials heretofore obtained in discovery until the resolution of the issues discussed in ¶ 2, *infra*, plaintiffs' renewed motions for contempt and the letter applications of the United States Catholic Conference and National Conference of Catholic Bishops (USCC/NCBB) are resolved as follows:

1. No production by USCC/NCBB pursuant to plaintiffs' subpoena or this court's order issued on September 4, 1985, will be required pending the final disposition by the Second Circuit of the government's petition.

notwithstanding counsel for the parties and the USCC/NCBB shall confer and seek to agree whether and to what



extent any of the documents responsive to plaintiffs' subpoenas are to be subject to a confidentiality stipulation or order. If any issues remain unresolved by November 27, the USCC/NCBB shall promptly file a motion for a protective order with regard to the unresolved issues.

3. Except as provided herein, and subject to issues arising from the Second Circuit's decision on the government's petition, no further objections to plaintiffs' subpoenas, as limited by this Court's order of September 4, 1985, shall be entertained.

4. Plaintiffs' renewed motion for contempt is denied, without prejudice.

IT IS SO ORDERED.

Dated: New York, New York  
November 19, 1985

/s/ Robert L. Carter  
ROBERT L. CARTER  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing)

**STIPULATION ENDORSING PROTECTIVE ORDER**

WHEREAS, the National Conference of Catholic Bishops ("NCCB") and United States Catholic Conference ("USCC") have been requested to provide by production of documents information contended by them to be confidential, including information concerning non-public, financial, proprietary and other internal church documents;

WHEREAS, the plaintiffs will also seek to obtain such information through other forms of discovery such as depositions; and

WHEREAS, NCCB and USCC oppose the public disclosure or dissemination of any such confidential information and oppose the publication of any such confidential information by the electronic or print media;

IT IS HEREBY STIPULATED AND AGREED by and between plaintiffs, defendants, NCCB/USCC and their respective undersigned counsel that a Protective Order may be entered in the form attached hereto.

Respectfully submitted,

WILLIAMS & CONNOLLY

By: /s/ Charles H. Wilson  
CHARLES H. WILSON  
RICHARD S. HOFFMAN  
839 17th Street, N.W.  
Washington, D.C. 20006  
(202) 331-5000

Attorneys for National Conference  
of Catholic Bishops and United  
States Catholic Conference

MARSHALL BEIL

/s/ Marshall Beil  
Suite 711  
19 West 44th Street  
New York, N.Y. 10036  
(212) 575-8500  
Attorney for Plaintiffs

RUDOLPH W. GIULIANI  
United States Attorney

By: /s/ Gerald T. Ford  
GERALD T. FORD  
Assistant United States Attorney  
One St. Andrews Plaza  
New York, N.Y. 10007  
(212) 791-1973  
Attorney for Defendants

(Order Omitted in Printing)

*Abortion Rights Mobilization, Inc., et al. against James A. Baker, III, Secretary of the Treasury, and Roscoe L. Egger, Jr., Commissioner of Internal Revenue*

80 Civ. 5590 (RLC)

# ENDORSEMENT

The renewed motion for contempt is denied without prejudice. While I agree that the USCC/NCCB are not in contempt since refusal was on advice of counsel, the likelihood of a rehearing being granted by the Court of Appeals on the January 14, 1986 denial of the petition is, based on the statistical evidence, so remote as to be practically nonexistent.

It is now the end of February. Unless the Court of Appeals grants the petition for rehearing in the interim, the USCC/NCCB are ordered on or before March 7, 1986, to produce the materials requested by plaintiffs in accordance with the court's order dated November 19, 1985. Failure or refusal of the USCC/NCCB to produce the materials requested will constitute grounds for a renewal plaintiffs' motion.

IT IS SO ORDERED.

Dated: New York, New York  
February 26, 1986

/s/ Robert L. Carter  
ROBERT L. CARTER  
U.S.D.J.

[Filed Feb. 26, 1986]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

80 Civ. 5590 (RLC)

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,  
*Plaintiffs,*  
—against—

JAMES A. BAKER, III, Secretary of the Treasury, and  
ROSCOE L. EGGER, JR., Commissioner of Internal Revenue,  
*Defendants.*

**NOTICE OF PLAINTIFFS'  
RENEWED MOTION FOR CONTEMPT**

PLEASE TAKE NOTICE that upon the affidavit of Marshall Beil, sworn to March 18, 1986, the exhibits thereto, and the prior proceedings herein, the plaintiffs will renew their motion to this Court before the Honorable Robert L. Carter, District Judge, on March 31, 1986, at the United States Courthouse, Foley Square, New York, New York 10007, for an order (a) holding the United States Catholic Conference and the National Conference of Catholic Bishops in civil contempt for failure to comply with deposition subpoenas duces tecum served upon them on March 2, 1983 and with this Court's orders of February 26, 1986, November 19, 1985, September 4, 1985 and April 3, 1984, and (b) imposing sanctions upon the contemnors unless and until they comply in full, (c) for the costs, including reasonable attorneys fees, of this and plaintiffs' prior contempt motions, and (d) for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
March 18, 1986

/s/ Marshall Beil  
MARSHALL BEIL  
19 West 44th Street  
New York, New York 10036  
(212) 575-8500  
Attorney for Plaintiffs

TO: GERALD T. FORD, ESQ.  
Assistant United States Attorney  
One St. Andrews Plaza  
New York, N.Y. 10007  
(212) 791-1973  
Attorney for Defendants

CHARLES H. WILSON, ESQ.  
WILLIAMS & CONNOLLY  
839 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 331-5067

and

HUGHES HUBBARD & REED  
One Wall Street  
New York, N.Y. 10005  
(212) 709-7000  
Attorneys for United States Catholic  
Conference and National Conference  
of Catholic Bishops



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
(Title Omitted in Printing)  
\_\_\_\_\_

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

**AFFIDAVIT IN SUPPORT OF  
RENEWED MOTION FOR CONTEMPT**

MASHALL BEIL, being duly sworn, says:

1. I am an attorney for plaintiffs in this action. I submit this affidavit in support of plaintiffs' third renewed motion to hold the United States Catholic Conference and the National Conference of Catholic Bishops ("USCC/NCCB") in contempt for failing to produce documents in open defiance of two subpoenas and four orders of this Court.

2. For more than three years plaintiffs have attempted to obtain documents in the possession of the USCC/NCCB which are crucial to the resolution of this lawsuit.<sup>1</sup> Throughout this time the USCC/NCCB have stalled and delayed, filing motion after motion and raising objection after objection in order to prevent their document production and impede the orderly progress of this suit towards trial.

<sup>1</sup> Most of the documents subpoenaed from the USCC/NCCB are not obtainable elsewhere, except perhaps from other Catholic Church entities. To the extent that the defendants are successful with their argument that 26 U.S.C. § 6103 precludes production of documents by the IRS, the subpoenaed documents become even more essential to the preparation for and conduct of the trial of this action.

3. Finally, after three years of veiled hints and suggestions that the resolution of one more motion for a protective order or of one last attempt to appeal this Court's decisions upholding standing would mark the end of the USCC/NCCB's stalling tactics, the USCC/NCCB has shown their true colors and publicly announced that they will not abide by the mandate of this Court.

4. This Court cannot condone this unwavering three-year effort to take unfair advantage of the judicial process in order to delay this case unconscionably and prevent it from ever coming to trial. Civil contempt with substantial sanctions to insure compliance is both necessary and appropriate.

**Chronology of Events**

5. In early 1983, as attorney for the plaintiffs, I contacted counsel for the USCC/NCCB to see if voluntary production of certain documents would be possible. After an exchange of correspondence and phone calls I was informed the the USCC/NCCB would require formal subpoenas.

6. The subpoenas were promptly served. The requisite notices of deposition were served in this Court on February 28, 1983 and subpoenas duces tecum, issued by the District of Columbia District Court, were served on the USCC/NCCB on March 2, 1983. (Copies of the notices of deposition are attached as Exhibit A and the Subpoenas as Exhibit B to this affidavit.)

7. The USCC/NCCB responded by moving to quash on April 15, 1983. Several months later, the defendants moved for a stay of the decision of that motion while the Supreme Court decided the case later known as *Allen v. Wright*, 104 S.Ct. 3315 (1984).

8. On April 3, 1984, this Court denied both motions, in effect ordering compliance with the subpoenas. (The Court's decision is attached as Exhibit C.)

9. Thereafter, in accordance with that decision, I proposed to counsel for the USCC/NCCB to limit the categories of documents to be produced in the initial document production. The negotiations did not produce an agreement, although the USCC/NCCB "voluntarily" sent to me copies of several widely-circulated memoranda of their general counsel relating to the issues at bar.

10. The USCC/NCCB, however, refused to produce any additional documents—the vast bulk of material called for by the subpoenas and this Court's order—preferring, counsel informed me, to wait until *Allen v. Wright* was decided.

11. After the July 3, 1984 decision in *Allen v. Wright*, 104 S.Ct. 3315 (1984), the defendants renewed their motion to dismiss for lack of standing and the USCC/NCCB submitted an *amicus* brief in support of that motion. The motion was denied by this Court on February 27, 1985. *Abortion Rights Mobilization, Inc. v. Regan*, 603 F.Supp. 970 (S.D.N.Y. 1985).

12. Nonetheless, the USCC/NCCB continued to refuse to produce documents. In June 1986 the USCC/NCCB filed a motion for a protective order. The following month the Court held a pretrial conference to discuss the motions of plaintiffs and the USCC/NCCB. This conference and subsequent discussions among counsel failed to produce a single document. Plaintiffs filed for contempt.

13. Plaintiffs' initial contempt motion in July 1985 (the notice of motion and moving affidavit, without exhibits, are attached hereto as Exhibit D), resulted in this Court's order of September 4, 1985 which directed the USCC/NCCB to "comply with the subpoena forthwith." (That order is attached as Exhibit E.) In light of that direction, the Court denied plaintiffs' motion without prejudice, holding "[i]n the event that there is a

continued refusal or failure to obey the court's order, plaintiff[s] may renew the motion." (Exhibit E)

14. Despite the Court's explicit order, the USCC/NCCB continued to refuse to produce any documents at all. They stalled, waiting for the defendants to file a petition for a writ of mandamus or prohibition in the Second Circuit. When no documents were produced, plaintiffs renewed their motion for contempt in October 1985 (the notice of motion and moving affidavit, without exhibits, are attached hereto as Exhibit F).

15. On October 25, 1985 the Court held a pre-trial conference to discuss plaintiffs' motion and the USCC/NCCB request for yet another protective order, based on the pendency of the mandamus petition and other objections to production. At that conference, and in a subsequent order dated November 19, 1985 (attached as Exhibit G), the Court resolved the remaining objections to production and held that no further objections would be entertained. The Court agreed, however, to put off production pending the "final disposition" of the defendants' petition to the Second Circuit.<sup>2</sup>

16. The Second Circuit unanimously denied the government's petition for mandamus on January 14, 1986 without opinion. (The order is attached as Exhibit H.)

17. Nonetheless, the USCC/NCCB continued to refuse to produce any documents, and plaintiffs brought a second renewed motion for contempt on February 6, 1986. (The notice of motion and moving affidavit, without exhibits, are attached as Exhibit I.) In response, the USCC/NCCB urged the Court to wait until a decision by the Second Circuit on defendants' petition for rehearing.

<sup>2</sup> The one objection not resolved at the October 1985 pre-trial conference—the purported confidentiality of certain USCC/NCCB documents—was eliminated by the entry in January 1986 of a protective order agreed to by plaintiffs, defendants and the USCC/NCCB.

18. Once again this Court gave the USCC/NCCB another chance to comply. On February 26, 1986 this Court denied plaintiffs' motion without prejudice and ordered the USCC/NCCB to provide plaintiffs with requested documents on or before March 7, 1986, unless in the interim the Court of Appeals granted the rehearing petition. (That order is attached as Exhibit J.)

19. On March 3, 1986 the Court of Appeals denied defendants' petition for a rehearing and rehearing *en banc*, again unanimously and without opinion. (The order is attached as Exhibit K.)

20. The USCC/NCCB, having finally exhausted both the Court's patience and all possible dilatory tactics, dropped their facade and publicly announced their intention to defy the orders of this Court. On March 6, 1986, their attorney Charles H. Wilson, Esq., informed this Court by letter that the USCC/NCCB will not produce the subpoenaed and ordered documents. Rather, Mr. Wilson indicated his clients want to bring this case again before the second Circuit—for the second, nay, third, time this year.<sup>3</sup>

21. Thus, as even the USCC/NCCB recognize, they are in contempt of this Court.

22. Indeed, the USCC/NCCB have truly been in contempt of this Court's process and its time and energies and crowded docket from the moment they refused to comply with the April 1984 order of this Court (Ex. C). Had the USCC/NCCB been serious about wanting to force appellate review of the jurisdictional issues—rather than simply wanting to delay the ultimate resolution of this case—they could have invited contempt in

<sup>3</sup> Counsel's letter is attached as Exhibit L. It seems to have been released to the press almost as soon as it was delivered to the Court and mailed to counsel. (See the press clippings attached as Exhibit M.)

April, 1984, or at any time thereafter. An appeal by the USCC/NCCB would have been particularly appropriate at the time the defendants submitted their mandamus petition. (In fact, the USCC/NCCB submitted an *amicus* brief to the Second Circuit in support of the petition arguing only the standing and other jurisdictional issues.)

23. To have done so would not have served the USCC/NCCB's purpose, however, as it would have brought on appellate review much earlier in these proceedings. Delay—not the expedition resolution of a legal dispute—has been the motivating factor behind the USCC/NCCB's three-year stall.

24. Accordingly, plaintiffs respectfully renew their motion for contempt and request that the Court impose immediate sanctions upon the USCC/NCCB unless and until they comply with the outstanding subpoenas and order the USCC/NCCB to pay for the costs, including reasonable attorneys fees, of these contempt motions.

/s/ Marshall Beil  
MARSHALL BEIL

Sworn to before me this 18th day of March, 1986

/s/ Frank R. Curtis  
Notary Public

(Exhibits Omitted in Printing)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
(Title Omitted in Printing)  
\_\_\_\_\_

DISTRICT OF COLUMBIA ) ss:  
 )  
 )

**AFFIDAVIT OF CHARLES H. WILSON**

CHARLES H. WILSON, being duly sworn, deposes and says:

1. My firm, Williams & Connolly, has represented the United States Catholic Conference ("USCC") and the National Conference of Catholic Bishops ("NCCB") in this matter since shortly before the plaintiffs issued the subpoenas that are the source of the current controversy. I have been the attorney at Williams & Connolly principally responsible for representing USCC/NCCB in this matter.

2. USCC/NCCB's involvement in this case predated the subpoenas served on them by the plaintiffs. As the Court is aware, USCC/NCCB were named as defendants in the amended complaint filed by the plaintiffs. USCC/NCCB, along with the defendants, responded to the amended complaint by filing motions to dismiss that argued a variety of jurisdictional grounds on which the amended complaint was defective. The principal ground for the motions to dismiss was that the plaintiffs lacked standing to maintain the action and that the Court, therefore, lacked jurisdiction over the case.

3. With one exception, the Court denied the motions to dismiss filed by USCC/NCCB and the defendants. The one exception was to grant that aspect of USCC/NCCB's motion to dismiss them as defendants because no relief could be granted against them. However, the Court ruled that some of the plaintiffs did have standing to maintain the action and permitted those plaintiffs to proceed to adjudication on the merits of their amended complaint. *Abortion Rights Mobilization, Inc. v. Regan*, 544 F. Supp. 471 (S.D.N.Y. 1982).

4. The case and the parties were in that posture when I was asked to undertake the representation of USCC/NCCB. The plaintiffs then served on USCC/NCCB the subpoenas that are the current source of contention. At that time, this Court had already denied the defendants' motion to certify an interlocutory appeal under 28 U.S.C. § 1292(b) of this Court's standing ruling. See *Abortion Rights Mobilization, Inc. v. Regan*, 552 F. Supp. 364 (S.D.N.Y. 1982).

5. After plaintiffs served their subpoenas, USCC/NCCB filed a motion to quash based on two jurisdictional deficiencies that had not been addressed in the Court's prior decision. USCC/NCCB were aware at the time that only if they were willing to risk the drastic sanction of contempt could they obtain appellate review of the jurisdictional issues presented by the motions to quash.

6. I advised USCC/NCCB that my analysis of the Court's decision denying the motions to dismiss and my research on the jurisdictional grounds on which a motion to quash could be based convinced me that this Court's standing ruling was in error and would probably be overturned on appeal. As part of my initial consultations with USCC/NCCB, I communicated that conclusion to my clients.

7. Consequently, from the very beginning of my representation of USCC/NCCB, my clients were guided by my

judgment of the importance of obtaining appellate review of the standing ruling before they had to submit to the plaintiffs' subpoenas.

8. USCC/NCCB's initial response to the subpoenas served by the plaintiffs was to move to quash those subpoenas. The motion to quash was based principally on arguments that the Court lacked jurisdiction over the case because its ruling on the motion to dismiss left the plaintiffs without a remedy and that they were without standing to maintain the action. The motion also expressed USCC/NCCB's concerns over the First Amendment implications of the searching inquiry manifested by the subpoenas and the burden in time and expense that the subpoenas would impose.

9. When the Court denied the motion to quash on April 3, 1984, it did so after the defendants had moved to stay all proceedings in the case, including the ruling on the motion to quash, pending the Supreme Court's disposition of the case of *Wright v. Regan* (decided and reported as *Allen v. Wright*, 104 S. Ct. 3315 (1984)). Defendants had argued that decision might cause the Court to reconsider its ruling on the standing issue in this case. While the Court denied the motion to quash and the request for a stay, it suggested that the parties avoid costly discovery activities until the Supreme Court acted. See Endorsement of April 3, 1984, attached to this Affidavit as Exhibit 1.

10. I had subsequent discussions with plaintiffs' counsel about document production. Thereafter, the General Counsel of USCC directed me to provide plaintiffs' counsel with several memoranda issued by the General Counsel advising Catholic bishops and other church entities on their obligations to refrain from political activity proscribed by 26 U.S.C. § 501(c)(3). (Copies of those memoranda are attached to this Affidavit as Exhibits 2-5.) My cover letter to plaintiffs' counsel cautioned against treating the receipt of those documents as the start of

document production. See Exhibit 6 to this Affidavit. Plaintiffs' attorney eventually acquiesced in my contention that USCC/NCCB should not be put to the burden of document production until the impact on this case of the Supreme Court's eventual decision in the *Wright* case could be assessed.

11. After the Supreme Court decided the case of *Allen v. Wright*, *supra*, on July 3, 1984, the defendants filed with this Court a renewed motion to dismiss the complaint, contending that this Court's standing ruling was at odds and in conflict with the Supreme Court's decision in *Allen v. Wright*. While that renewed motion was pending before this Court, plaintiffs made no serious demands on USCC/NCCB for document production.

12. After the Court denied the defendants' renewed motion to dismiss the complaint, plaintiffs made their first formal effort to compel compliance with the subpoenas by filing their first motion for contempt on June 18, 1985. At the time that the plaintiffs filed that motion, the Court had before it a motion by the defendants under 28 U.S.C. § 1292(b) requesting permission to take an interlocutory appeal of the denial of the renewed motion to dismiss. That motion stated the defendants' intention to seek relief through a writ of mandamus in the Court of Appeals if the § 1292(b) motion was denied.

13. After the Court denied the defendants' renewed motion to dismiss and before the plaintiffs filed their motion for contempt, I had several conversations with the attorney for the plaintiffs, who insisted that USCC/NCCB begin producing documents called for by the subpoenas. That demand caused me to consult further with representatives of USCC/NCCB.

14. Because of USCC/NCCB's long-standing concern about appellate review of the standing question and because the defendants were then actively pursuing attempts to obtain such review, I urged the plaintiffs' at-



torney to defer any contempt motion until after those efforts at appellate review had been exhausted. As I noted in my affidavit of July 2, 1985, plaintiffs' attorney declined to delay seeking contempt. (A copy of my affidavit of July 2, 1985, is attached to this Affidavit as Exhibit 7.)

15. At the time that the plaintiffs filed their motion for contempt, I advised representatives of USCC/NCCB that they could obtain appellate review of the Court's standing ruling independently of the defendants' efforts if they were found in contempt and appealed from that finding. USCC/NCCB rejected risking contempt at that time because the government was pursuing efforts to obtain appellate review. USCC/NCCB wished to avoid, if at all possible, any appearance of disrespect for this Court or of defiance of its orders.

16. After a hearing, the Court entered an Endorsement on September 4, 1985, denying the motion for contempt but ordering USCC/NCCB to comply with the subpoenas "forthwith." That Endorsement, attached to this Affidavit as Exhibit 8, permitted the plaintiffs to renew their motion if USCC/NCCB continued to refuse to comply with the subpoenas.

17. As recited in the plaintiffs' attorney's affidavit of October 9, 1985 (Exhibit F to the Affidavit of Marshall Beil dated March 18, 1986), I had discussions with plaintiffs' attorney following the Endorsement of September 4, 1985. By that time, it had come to the attention of USCC/NCCB that the lead plaintiff, Abortion Rights Mobilization, Inc., had used information obtained from the subpoena issued to the Roman Catholic Archdiocese of San Antonio, Texas, as the basis for a news release. (A copy of that news release is attached to this Affidavit as Exhibit 9.) During the discussions with plaintiffs' attorney, I stressed USCC/NCCB's concern over that use of whatever information plaintiffs might obtain through their subpoenas and asked for agreement on a confidentiality order. When plaintiffs refused to agree to such a confidentiality order, I informed their attorney by letter

that, absent such an order, USCC/NCCB could not consider further the issue of document production. (A copy of my letter to Marshall Beil of October 4, 1985, is attached to this Affidavit as Exhibit 10.) My intention in communicating that position of USCC/NCCB to plaintiffs' attorney was to seek the Court's assistance in obtaining a confidentiality order. In fact, after plaintiffs filed their renewed motion for contempt on October 9, 1985, I wrote to the Court requesting an informal conference pursuant to Rule 3(1) of this Court for that very purpose. (A copy of my letter to the Court of October 11, 1985, is attached to this Affidavit as Exhibit 11.)

18. At the time that the plaintiffs' attorney and I were discussing the issue of subpoena compliance, defendants filed a mandamus petition in the Court of Appeals to obtain review of the denial of their renewed motion to dismiss.

19. Indeed, by the time the Court convened an informal conference on October 25, 1985, as requested in my letter of October 11, 1985, the Court of Appeals had called for a response to the defendants' petition for a writ of mandamus. As a result of that action by the Court of Appeals, the Court entered an Order on November 19, 1985 (a copy of that Order is attached to this Affidavit as Exhibit 12), denying the renewed motion for contempt and relieving USCC/NCCB from any obligation to comply with plaintiffs' subpoenas until final disposition by the Court of Appeals of the government's petition for mandamus. That Order also acknowledged the legitimacy of USCC/NCCB's concern about confidential treatment of their documents and directed the parties to confer and agree to a stipulated confidentiality order.

20. The Court of Appeals denied the defendants' petition for mandamus in a summary order issued January



14, 1986, and plaintiffs renewed their motion for contempt on January 24, 1986. The Court of Appeals' action and the renewed motion for contempt caused me to engage in further discussions with representatives of USCC/NCCB concerning what action they should take with regard to the plaintiffs' subpoenas. While the Court denied the plaintiffs' second renewed motion for contempt in its Endorsement of February 26, 1986 (a copy of which is attached to this affidavit as Exhibit 13), it imposed a deadline of March 7, 1986, for USCC/NCCB to produce documents.

21. When the defendants' petition for rehearing the denial of its motion for mandamus was denied on March 3, 1986, it became apparent that all avenues of appellate review had been effectively foreclosed for the defendants. My discussions with representatives of USCC/NCCB in the period following the filing by plaintiffs of their second renewed motion for contempt focused on whether USCC/NCCB should submit to the subpoenas and allow plaintiffs to begin their broad and sweeping discovery against USCC/NCCB and related entities. Coming to a decision on that issue was not an easy process. It involved many hours of deliberation between myself and attorneys at USCC/NCCB, consultations between USCC attorneys and the appropriate staff people at USCC/NCCB, correspondence with the Executive Committee of USCC/NCCB, and, finally, deliberations by the members of the Executive Committee itself. The decision that was made, and made reluctantly, was to decline to comply with the subpoenas.

22. Because I was privy to most of the deliberative process that went into the ultimate decision made by USCC/NCCB, I can attest that that decision was made neither hastily nor lightly. USCC/NCCB had hoped throughout the period of its deliberations over submitting to the subpoenas that the defendants would be successful in obtaining appellate review and obviate any need to

risk contempt to obtain appellate review. When the defendants' efforts to obtain appellate review failed, USCC/NCCB finally concluded, as a matter of principle, that their only course of action was to risk a finding of contempt. They came to that conclusion because of their conviction on advice of counsel that this Court's standing ruling was in error and that, if that ruling is overturned on appeal, the Court will have no jurisdiction to order compliance with the highly intrusive and burdensome subpoenas that are at issue. That was the sole consideration taken into account by USCC/NCCB in its deliberations over subpoena compliance in reaching the ultimate decision that it made.

/s/ Charles H. Wilson  
CHARLES H. WILSON

Subscribed and sworn to before me this 4th day of April, 1986.

/s/ [Illegible]  
Notary Public

(Exhibits Omitted in Printing)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing)

AFFIDAVIT OF WILFRED R. CARON

DISTRICT OF COLUMBIA     )  
                                      ) SS:  
CITY OF WASHINGTON     )

WILFRED R. CARON, being duly sworn, deposes and says:

1. I am General Counsel of the United States Catholic Conference and the National Conference of Catholic Bishops ("USCC/NCCB"). The statements made in this affidavit are on my personal knowledge, or upon information available to and relied upon by me for the performance of my duties. The purpose of my affidavit is primarily to explain how the plaintiffs' subpoenas impose such severe burdens on USCC/NCCB, in terms of resource diversion and intrusion, that USCC/NCCB believe they must decline compliance to obtain definitive appellate review of this Court's jurisdictional rulings. Plaintiffs' subpoenas seek to probe the decisional and policy making processes of USCC/NCCB and the implementation of the results of those processes.

2. This lawsuit targets the tax exemption for USCC/NCCB, and all other Catholic entities, institutions, or organizations whose tax exemption is embodied in a Group Ruling issued to USCC. The NCCB is an unincorporated association of all active Catholic bishops in the United States. It has legal status under Canon Law

(code of Canon Law, ccs 447-459) through which the bishops "jointly exercise certain pastoral functions." The USCC is a non-profit corporation organized under the laws of the District of Columbia with the same membership as the NCCB. The first Group Ruling was issued on March 25, 1946. One is issued annually covering organizations (unless otherwise noted) included in the current edition of the Official Catholic Directory (described *infra*, ¶ 4).

3. The current Group Ruling covers "agencies and instrumentalities and educational, charitable and religious institutions operated, supervised or controlled by or in connection with, the Roman Catholic Church in the United States, its territories or possessions appearing in the Official Catholic Directory for 1985." The Group Ruling is a procedural device which facilitates action by the Internal Revenue Service ("IRS"). The Group Ruling enables the IRS to act only on the application of USCC as the holder of the Ruling, and not on the initial application of each of the thousands of separate Catholic entities and institutions covered under the Ruling. Unless another Catholic organization could be found capable of holding a Group Ruling of this type, revocation of the USCC Group Ruling would require the Service to review and approve or disapprove the tax exempt status of each of the several thousand covered Catholic entities—dioceses (now 183), religious orders or institutes, and separately organized schools, hospitals, etc.

4. The Official Catholic Directory was first published in 1817 and is now published annually. The 1985 Official Catholic Directory contains 1,517 pages and is nearly two inches thick. We would be willing to make available a copy for inspection by the Court, and attach the listing for one diocese as an example of information found in the Directory (Exhibit 1). The Directory is a detailed listing of information on the bishops comprising the hierarchy of the Church in the United States, the structure of the USCC/NCCB, officers of State Catholic Confer-



ences, membership and facilities of religious orders, and the organization and composition of each diocese. For each diocese, it lists the names of the bishop of the diocese and all auxiliary bishops (if any), all diocesan officials, and every parish and priest, and contains separate lists for every Catholic institution within the diocese, namely, schools, colleges, seminaries, hospitals, homes for the aged or infirm, hospices, social service agencies, orphanages, counselling centers, youth centers, monasteries, convents, foundations, retreat houses, cemeteries, charitable groups, refugee assistance groups, etc. Each diocese is responsible for an annual revision of the entire listing for itself and each institution within the diocese, which is then published in the next year's edition of the Official Catholic Directory. The current Directory, and a list of changes, additions and deletions to the past year's Directory, is submitted to the Internal Revenue Service each year by USCC with a request for a Group Ruling. In this way, the Group Ruling is updated annually to reflect these changes in the Official Catholic Directory.

5. In order to understand more clearly the intrusive nature of the discovery that plaintiffs seek against NCCB/USCC, it is appropriate to consider how pro-life policy is made and implemented, specifically focusing on the Pastoral Plan for Pro-Life Activities, relied upon by plaintiffs for their legal theory. The USCC/NCCB policy on pro-life matters is formulated by the Ad Hoc Committee for Pro-Life Activities, chaired by Joseph Cardinal Bernardin, Archbishop of Chicago. His predecessors were Terence Cardinal Cooke and John Cardinal Cody. The membership currently includes twelve bishops and archbishops, one of whom is John Cardinal O'Connor, Archbishop of New York. This committee meets several times a year to review current developments and formulate policy related to abortion, such as the status and performance of various public education efforts, and to monitor public policy matters in legislation and litigation of concern to the Church.

The committee also considers other matters relevant to pro-life concerns, such as interfaith dialogue over medical care for handicapped infants, legislation affecting termination of artificial life sustaining treatment, etc.

6. Serving as staff to the Pro-Life Committee is the Office for Pro-Life Activities of the NCCB. That office is staffed by a priest-director, and two professional assistants, one responsible for monitoring legislative action (status of bills, drafting letters of comment, etc.) and the other for coordination of the NCCB Respect Life Program. The office supports the committee by monitoring developments in the pro-life area and serving as an information clearinghouse for dioceses and pro-life groups. Committee documents are invariably drafted by staff for committee review and approval. Committee decisions are implemented by the staff. In order for decisions to be fully executed, however, the staff must depend on the voluntary cooperation of the dioceses.

7. In November 1975 the bishops of the USCC/NCCB adopted the Pastoral Plan for Pro-Life Activities, an important pastoral effort to reverse the decline in "[r]espect for human life . . . in our society during the past decade." A copy is attached as Exhibit 2 to this affidavit. "In [the] Pastoral Plan, [the bishops] hope[d] to focus attention on the pervasive threat to human life arising from the present situation of permissive abortion." The Plan sought "to activate the pastoral resources of the Church in three major efforts: (1) an educational/public information effort . . . (2) a pastoral effort . . . [and] (3) a public policy effort . . . ." Under the general guidelines described in Paragraphs 5 and 6 for policy development, the document had been drafted by the staff and approved by the Pro-Life Committee prior to its adoption by the full membership of the USCC/NCCB. The Plan depends for its full execution on the cooperation of individual dioceses.



8. Plaintiffs labelled this Plan the "blueprint for the Church's illegal activities." Amended Complaint, ¶ 21. Quoting parts of the Plan out of context (*id.* ¶¶ 21-24, 30), plaintiffs cite various occurrences, which they term illegal political activity, as specific examples of the way the Pastoral Plan allegedly constituted a systematic violation of Section 501(c)(3) of the Internal Revenue Code (*id.* ¶¶ 25-28). Plaintiffs therefore seek documents embodying deliberations on and implementation of the Pastoral Plan adopted in 1975—every draft, every opinion letter, every summary of a meeting leading to the Plan and every letter, instruction, memorandum, or comment written about implementation of the Plan must be identified. ARM Subpoenas, ¶¶ 1-5. Every sermon, bulletin announcement, newspaper listing, meeting notice, etc. may be relevant if it deals with abortion. Plaintiffs also seek any document by any member of USCC/NCCB to or from any candidate for any public office (*Id.*, 16, see ¶¶ 6, 15). They seek documents on any financial or other support by any Catholic to twelve prolife organizations. (*Id.* ¶ 10). Plaintiffs seek USCC/NCCB-IRS correspondence and all documents concerning the interpretation and implementation of the tax code (Subpoenas ¶¶ 11, 12, 13, 14, 15). This sweeping effort would not only entail a significant burden (discussed *infra*, ¶¶ 15, 16), but, as discussed below, would address facts that are now largely of historical interest only.

9. The Pastoral Plan for Pro-Life Activities was extensively revised by the staff of the Pro-Life Office and the Pro-Life Committee in 1985. The revision was approved by the full membership of the USCC/NCCB in November 1985. A copy is appended as Exhibit 3. The Revised Plan reflects "the contemporary situation, but . . . reaffirms its central message regarding the dignity of human life while urging intensified efforts to implement this plan." It aims to change the current law on abortion, and "recognizes a need to remove or alleviate

those circumstances which may lead otherwise responsible people to choose such actions." The Plan emphasizes the Church's role in seeking to protect life as part of "a consistent strategy in support of human life in its various stages and circumstances." This strategy "links" issues "at the level of moral principle"—"abortion, nuclear war, capital punishment, degrading poverty, or racism, sexism and other forms of discrimination." This strategy rests on the premise that "a society which destroys human life by abortion under the mantle of law unavoidably undermines respect for life in all other contexts. Likewise, protection in law and practice of unborn human life will benefit all life, not only the lives of the unborn."

10. Of particular significance in assessing the intrusive burden of the subpoenas issued in 1983 is that the particular portions of the 1975 Plan cited by plaintiffs (amended complaint, ¶¶ 21-24, 30, 52) have been revised, eliminating much of what plaintiffs challenged. (1) Paragraph 22 of the amended complaint quotes portions of Exhibit 2 at pp. 2-3. The revised text is in Exhibit 3 at pp. 5-6. (2) Paragraph 23 of the amended complaint quotes text of Exhibit 2 found at p. 8. The revised text is in Exhibit 3 at p. 14. (3) Paragraph 24 of the amended complaint quotes parts of the text of Exhibit 2 at pp. 12-13. The revision deletes those portions; the text is now in Exhibit 3 at pp. 16-17.

11. The subpoenas also portend a potentially significant burden by identifying persons for possible deposition. Paragraph 9 of the subpoenas seeks, for each year from 1974 to the present, the identities of each president and executive secretary of the State Catholic Conferences in sixteen states and the bishops or archbishops and pro-life coordinators for eighteen dioceses.

12. Based on a review of the Official Catholic Directory for each year in question, the initial list of names

will consist of at least 160 persons. For the States listed, two (South Dakota and Virginia) have no Conferences. Because of personnel changes between 1974 and 1986, the other fourteen have had at least 55 persons in the positions of president or chairman and executive secretary, 25 of whom are bishops. With respect to the dioceses, there are now 18 bishops or archbishops of the dioceses and as many pro-life coordinators, for a total of 36 persons. There are also 47 auxiliary bishops (not counting predecessors not now serving in the named dioceses due to assignment changes). There have also been at least 21 persons who have served as prolife coordinators but are no longer functioning in that capacity in those dioceses. This list must be supplemented by the names of additional persons, including other bishops, who were already listed for depositions by plaintiffs in 1983.

13. Geographically, the persons who are potential witnesses reside in an area from Worcester, Massachusetts through the New York Metropolitan Area, south through Philadelphia, Baltimore, and Washington to Richmond, Virginia—in all, eleven dioceses in six states and the District of Columbia and five State conferences. Plaintiffs have also concentrated on the north-central part of the country, including the dioceses of Fargo, Sioux Falls, St. Cloud, St. Paul, and St. Louis and the Catholic Conferences in six adjoining states—Michigan, Wisconsin, Minnesota, North Dakota, Iowa, and Missouri. Plaintiffs will also examine Florida, Texas, and California, and the diocese of San Diego.

14. Plaintiffs have already begun discovery against the archdiocese of San Antonio. Plaintiffs served deposition subpoenas on Archbishop Flores, the Archdiocesan Publishing Society, and a former employee. The subpoenas sought documents concerning editorials and draft editorials from the archdiocesan newspaper, correspondence concerning the tax status of the archdiocese and its news-

paper, correspondence to or from any candidate, and documents concerning the 1975 Pastoral Plan. Both Church deponents resisted and moved to quash on the ground that this Court lacked jurisdiction over the case. That motion was denied and document production was commenced. Plaintiffs temporarily limited their discovery. Exhibit 4 hereto. Plaintiffs took no depositions and focused production mainly on documents about a single editorial in the archdiocesan newspaper. Plaintiffs, however, expressly stated their intention to seek complete discovery later. Exhibit 4.

15. Based on reasonable review of the subpoenas and of case developments, the USCC/NCCB and many Catholic dioceses and entities face the specter of several years' discovery. It is realistic to expect that the discovery process would divert Church resources away from pastoral and policy efforts in the pro-life area (noted above in ¶¶ 5, 6) to attend to the very detailed discovery planned by plaintiffs. For the time in which the limited staff of the Office for Pro-Life Activities is diverted to locate documents or be deposed, bishops are deposed (or preparing to be deposed), other files in state conferences and dioceses are sought and searched, more bishops and others are deposed, etc., these persons cannot perform their duties for the Catholic Church and its people.

16. ARM has sought and obtained this Court's approval for access, otherwise unavailable to them, to the deliberations, plans, and agenda of its Church opponents on a central and bitter area of disagreement—abortion. The plaintiffs now seek to probe the processes by which the policy makers of the Church applied Gospel values to draft the 1975 Pastoral Plan—its theme, its relation to the Church's religious mission, the means by which the Church chose to enter the public policy debate, etc. Everything thought, spoken, and written about the Plan is subject to discovery. This Court's protective order limits dissemination of this information but does not

limit plaintiffs' knowledge obtained through invasive discovery that might be used in this case or in the future controversies. Because of the highly intrusive character of this discovery effort, the USCC/NCCB must decline to comply with the subpoenas in an effort to gain definitive appellate review of this Court's jurisdictional rulings.

/s/ Wilfred R. Caron  
WILFRED R. CARON

Subscribed and sworn to before me this 4th day of April, 1986.

/s/ \_\_\_\_\_  
Notary Public

My Commission Expires September 30, 1987

(Exhibits Omitted in Printing)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
(Title Omitted in Printing)  
\_\_\_\_\_

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

**REPLY AFFIDAVIT**

MARSHALL BEIL, being duly sworn, says:

1. As attorney for plaintiffs I submit this affidavit in reply to the answering papers submitted by the United States Catholic Conference and the National Conference of Catholic Bishops ("USCC/NCCB") in response to plaintiff's third renewed motion for contempt.

2. The USCC/NCCB's answer leaves no doubt that they are in contempt of this court. The USCC/NCCB clearly and unequivocally refuse to comply with the Court's orders to produce the subpoenaed documents. For this reason alone, plaintiffs' motion should be granted.

3. The USCC/NCCB seek to justify their refusal, the three years of delay and the many earlier "missed" (or more accurately, "deliberately ignored") opportunities to obtain appellate relief, with repeated assertions of good faith and respect for the Court. As the Court has had many occasions over the past three years to observe the conduct and posturing of the USCC/NCCB first hand, no elaborate argument is necessary to point out that the lateness of the hour gives a particularly hollow ring to these protestations.

4. Most of the USCC/NCCB's papers are devoted to an attempt to paint a picture of the USCC/NCCB as an



institution under siege, a beleaguered, pastoral body through whose files the voracious plaintiffs seek to run amuck. The image does not ring true, however, as the reality is quite different.

5. The subpoenas, though necessarily broad given the nature of the parties and the subject matter, are carefully drawn to relate quite specifically to the issues at hand. The requests fall into three areas:

a) Documents relating to whether the USCC/NCCB or any their constituent elements in fact violated the anti-electioneering provision of § 501(c)(3), either in the passage and implementation of Part IV of the 1975 Pastoral Plan for Pro-Life Activities, which called for the establishment of congressional district committees to, among other things, "work for qualified candidates" committed to the Catholic Church's anti-abortion position (p. 13 of Ex. 2 to Caron affidavit), or in the Catholic Church's dealings with candidates for political office or specified "right-to-life" and other political groups;

b) Documents relating to the grant of tax-exempt status to the USCC/NCCB and to any efforts by the IRS to enforce the provision of the tax code at issue here;<sup>1</sup>

c) Requests for specific relevant documents or the identity of persons with knowledge of relevant information.

<sup>1</sup> This portion of the plaintiffs' subpoenas virtually duplicates subpoenas served upon the USCC/NCCB by the defendants. (Defendants' notice of deposition of the NCCB which is identical to the subpoenas served by the government on the USCC and the NCCB is attached hereto as Exhibit N.) The original notice of motion by the USCC/NCCB to quash plaintiffs' subpoenas, dated April 15, 1983, also sought to quash defendants' subpoenas. Since the denial of that motion (Ex. C to Beil affidavit of March 18, 1986), the USCC/NCCB have neither objected further to defendants' subpoenas nor complied with them.

6. As even the USCC/NCCB implicitly recognize, this is perfectly proper discovery, appropriately tailored to the relevant factual and legal issues.

7. Rather, the USCC/NCCB suggest in their papers that the plaintiffs impermissibly "seek to probe the decisional and policy making processes" of the USCC/NCCB (Caron affidavit, par. 1). This assertion, however, ignores the prior rulings of this Court. The Court carefully reviewed similar arguments previously made by the USCC/NCCB and ruled that two subsections of the subpoenas seeking internal USCC/NCCB minutes would not be enforced until limited by agreement or further briefing. (Order of Sept. 4, 1985, Ex. E to Beil affidavit.) Such internal decisional processes, accordingly, are not part of the production now being sought.

8. The USCC/NCCB's repeated references to the newly revised Pastoral Plan for Pro-Life Activities are similarly of no help to them. That the USCC/NCCB have recently removed the portions of the Pastoral Plan most objected to by the plaintiffs does not make discovery concerning what happened in the ten years the 1975 Plan was in effect any less relevant. Indeed, isn't the 1985 revision of the Plan a confession of prior impropriety?

9. Finally, the history of plaintiffs' discovery from the Archdiocese of San Antonio does not conclusively demonstrate plaintiffs' voraciousness. Rather, it shows how discovery can be properly handled in this matter to avoid undue burden to a non-party witness.

10. After the Archdiocese's motion to quash was denied, along with the simultaneous USCC/NCCB motion (Ex. C), counsel for the Archdiocese, plaintiffs' Texas counsel and I worked out an arrangement which limited the Archdiocese's initial document production and postponed indefinitely the deposition of the Archbishop and others. Although plaintiffs have reserved their right to take this additional discovery, my hope is that by care-

ful use of stipulations and admissions, further discovery from the Archdiocese will not be necessary.<sup>2</sup>

12. I made a similar effort to limit initial production by the USCC/NCCB at about the same time. That effort was rebuffed totally, however, as the USCC/NCCB refused to comply at all. Now it is too late to negotiate.

13. Plaintiffs, whose resources are considerably more limited than those of the government or the Catholic Church, are painfully aware of the burdens of discovery and litigation. Throughout this case, plaintiffs have sought to eliminate expensive formalities and narrow the issues and areas of dispute wherever possible or practicable.<sup>3</sup> Plaintiffs most certainly do not want this case to be any more protracted than it has already been.

14. By contrast, delay and increased burden on the plaintiffs work to the benefit of the USCC/NCCB which have been as responsible as any party for slowing down the forward progress of this action. The Court should not tolerate any further delay nor reward the USCC/

<sup>2</sup> The Archdiocesan production reveals the relevance of the materials sought in these subpoenas. The San Antonio Archdiocese produced documents which, among other things, confirmed that its official newspaper supported a presidential candidate in the Texas 1980 presidential primary—the article was entitled “To the IRS—‘Nuts!’” and is attached as Exhibit O; that the article and its tone of defiant challenge to the Internal Revenue Service received national publicity (see documents, one of which was produced by the Archdiocese, attached as Exhibit P); but that the IRS did absolutely nothing in response, never even contacting the Archdiocese or otherwise investigating the violation of the tax code. (see documents attached as Exhibit Q).

<sup>3</sup> Defendants’ counsel and I have, for example, talked from time to time regarding limitations on the factual scope of discovery and trial. Because of the government’s efforts to appeal and the USCC/NCCB’s failure to produce documents, these discussions have not yet resulted in any concrete commitments. The effort to narrow the case will resume, however, immediately upon the resolution of the issues presented in this motion.

NCCB for their past inaction. Plaintiffs’ motion should be granted in all respects.

/s/ Marshall Beil  
MARSHALL BEIL

Sworn to before me this 10th day of April 1986

/s/ Janice A. Ladusch  
Notary Public

(Exhibits Omitted in Printing)